

MT LEGISLATIVE HISTORY

BEST COPY
AVAILABLE

Chapter 609 1991

Bill H 778 S _____

Original bill & hist. C

H. Committee on Natural Resources

S. Committee on Judiciary

Hearing Date(s) Feb 18 ☒ C

Hearing Date(s) Apr 10 ☒ C

Mar 20 ☒ C

Apr 11 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 21 ☒ C

Apr 11 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

HOUSE FINAL STATUS

HB 778

4/09	2ND READING AMENDMENTS CONCURRED	96	2
4/10	3RD READING AMENDMENTS CONCURRED	94	4
4/15	SIGNED BY SPEAKER		
4/16	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 472		

EFFECTIVE DATE: 10/01/91

HB 777 INTRODUCED BY QUILICI, ET AL.

APPROVE ENERGY CONSERVATION PROJECTS
AND AUTHORIZE BOND ISSUANCEBY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION

2/12	INTRODUCED		
2/12	REFERRED TO APPROPRIATIONS		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/16	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
3/21	HEARING		
3/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/27	2ND READING PASSED	96	3
3/28	3RD READING PASSED	95	2
	TRANSMITTED TO SENATE		
3/28	FIRST READING		
3/28	REFERRED TO FINANCE & CLAIMS		
4/09	HEARING		
4/10	COMMITTEE REPORT—BILL CONCURRED		
4/11	2ND READING CONCURRED	50	0
4/12	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE		
4/19	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 571		

EFFECTIVE DATE: 4/23/91

HB 778 INTRODUCED BY D. BROWN, ET AL.

RECREATIONAL USE OF STATE LANDS

2/12	INTRODUCED		
2/12	REFERRED TO NATURAL RESOURCES		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
3/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/02	2ND READING PASSED AS AMENDED	70	29
4/04	3RD READING PASSED	65	32
	TRANSMITTED TO SENATE		
4/04	FIRST READING		
4/04	REFERRED TO JUDICIARY		
4/10	HEARING		
4/11	REVISED FISCAL NOTE REQUESTED		
4/11	COMMITTEE REPORT—BILL CONCURRED		
4/13	REVISED FISCAL NOTE RECEIVED		
4/15	REVISED FISCAL NOTE PRINTED		
4/15	2ND READING CONCURRED	47	1
4/16	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
4/20	SIGNED BY SPEAKER		

HB 779

HOUSE FINAL STATUS

4/20 SIGNED BY PRESIDENT
 4/20 TRANSMITTED TO GOVERNOR
 4/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 609

EFFECTIVE DATE: 3/01/92

HB 779 INTRODUCED BY CROMLEY, ET AL.

LIMIT BANKRUPTCY STAYS OF FORECLOSURES
 UNDER SMALL TRACT FINANCING ACT

2/12	INTRODUCED		
2/12	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/13	FIRST READING		
2/19	HEARING		
2/19	COMMITTEE REPORT—BILL PASSED		
2/21	PLACED ON CONSENT CALENDAR		
2/23	3RD READING PASSED	93	5
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO BUSINESS & INDUSTRY		
3/08	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	49	0
3/14	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/21	SIGNED BY PRESIDENT		
3/22	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 212		

EFFECTIVE DATE: 10/01/91

HB 780 INTRODUCED BY PAVLOVICH, ET AL.

ALLOW HIV-RELATED TESTING OF PERSONS
 CHARGED WITH SEXUAL OFFENSES

2/12 INTRODUCED
 2/12 REFERRED TO HUMAN SERVICES & AGING
 2/13 FIRST READING
 2/18 HEARING
 2/22 TABLED IN COMMITTEE

HB 781 INTRODUCED BY KIMBERLEY, ET AL.

ALLOW DEPARTMENT OF HEALTH TO ADOPT RULES
 FOR AIR QUALITY PERMIT FEES

BY REQUEST OF DEPARTMENT OF HEALTH AND
 ENVIRONMENTAL SCIENCES

2/12	INTRODUCED		
2/12	REFERRED TO TAXATION		
2/13	FIRST READING		
2/13	FISCAL NOTE REQUESTED		
2/19	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
3/13	HEARING		
3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/01	2ND READING PASSED	88	9
4/03	3RD READING PASSED	84	15
	TRANSMITTED TO SENATE		
4/04	FIRST READING		
4/04	REFERRED TO NATURAL RESOURCES		
4/09	REFERRED TO TAXATION		
4/11	HEARING		
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/16	2ND READING CONCURRED	49	0

HB 397 INTRODUCED BY BARDANOUVE, ET AL

AUTHORIZE TRUSTEES OF SCHOOL DISTRICT TO ADOPT A
REVISED FINAL BUDGET IF TRUSTEES DETERMINE
THAT REVENUE FROM GENERAL FUND NET LEVY OR
PERMISSIVE LEVY WILL NOT BE REQUIRED TO FUND
THE DISTRICT'S BUDGET

1/25 INTRODUCED
1/25 REFERRED TO TAXATION
1/26 FIRST READING
2/01 HEARING
2/14 TABLED IN COMMITTEE

HB 398 INTRODUCED BY CONNELLY, ET AL

REVISE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY

1/25 INTRODUCED
1/25 REFERRED TO TAXATION
1/26 FIRST READING
1/29 FISCAL NOTE REQUESTED
2/01 FISCAL NOTE RECEIVED
2/04 FISCAL NOTE PRINTED
2/05 HEARING
3/27 TABLED IN COMMITTEE

HB 399 INTRODUCED BY CONNELLY, ET AL

SUBDIVISION REVIEW RESTRICTIONS ON LOCAL GOVERNMENT

1/25 INTRODUCED
1/25 REFERRED TO NATURAL RESOURCES
1/26 FIRST READING
2/18 HEARING
2/20 TABLED IN COMMITTEE

HB 400 INTRODUCED BY M. HANSON, ET AL

PROHIBIT DISCRIMINATION IN AVAILABILITY
OF PUBLIC MENTAL HEALTH SERVICES

1/25 INTRODUCED
1/25 REFERRED TO HUMAN SERVICES & AGING
1/26 FIRST READING
2/04 HEARING
2/18 TABLED IN COMMITTEE

HB 401 INTRODUCED BY D. BROWN

AUTHORIZE BOARD OF LAND COMMISSIONERS TO
IMPLEMENT STATE LANDS RECREATION
ACCESS PROGRAM

BY REQUEST OF DEPARTMENT OF STATE LANDS

1/25 INTRODUCED
1/25 REFERRED TO NATURAL RESOURCES
1/26 FISCAL NOTE REQUESTED
1/26 FIRST READING
1/31 FISCAL NOTE RECEIVED
2/04 FISCAL NOTE PRINTED
2/18 HEARING
DIED IN COMMITTEE

HB 402 INTRODUCED BY WYATT, ET AL

ESTABLISHING A PROPERTY TAX REAPPRAISAL
CYCLE OF 3 YEARS RATHER THAN 5 YEARS

1/25 INTRODUCED
1/25 REFERRED TO TAXATION
1/26 FIRST READING

HOUSE BILL NO. 778

INTRODUCED BY D. BROWN, BIANCHI, RANEY, STRIZICH,
LYNCH, DRISCOLL, DARKO, MENAHAN, HARPER, STANG,
COHEN, SQUIRES, MCCULLOCH, SCOTT, MANNING, DOHERTY,
SVRCEK, DAILY, FRANKLIN, JACOBSON, VAN VALKENBURG,
PAVLOVICH, MCCARTHY, QUILICI, REAM, WYATT,
J. BROWN, HARRINGTON, CONNELLY

IN THE HOUSE

FEBRUARY 12, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 13, 1991	FIRST READING.
MARCH 21, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 23, 1991	PRINTING REPORT.
APRIL 2, 1991	SECOND READING, DO PASS AS AMENDED.
APRIL 3, 1991	ENGROSSING REPORT.
APRIL 4, 1991	THIRD READING, PASSED. AYES, 65; NOES, 32.
	TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
APRIL 11, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 15, 1991	SECOND READING, CONCURRED IN.
APRIL 16, 1991	THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 17, 1991	RECEIVED FROM SENATE.
----------------	-----------------------

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *778*
 2 INTRODUCED BY *Don Brann*
 3 *Special House Message*
 4 A BILL FOR AN ACT ENTITLED: *AN ACT REVISING THE LAWS*
 5 *RELATING TO USE OF STATE LANDS; PROVIDING THAT ALLOWABLE USE*
 6 *OF STATE LANDS INCLUDES RECREATIONAL USE BY THE PUBLIC;*
 7 *REQUIRING SURFACE LEASES FOR GRAZING, AGRICULTURAL, OR*
 8 *LOGGING PURPOSES TO ALLOW PUBLIC RECREATIONAL USE UNLESS*
 9 *CERTAIN CONDITIONS ARE MET; REQUIRING THE BOARD OF LAND*
 10 *COMMISSIONERS TO OPEN UP EXISTING LEASES TO PUBLIC*
 11 *RECREATIONAL USE WITH CERTAIN EXCEPTIONS; REQUIRING PURCHASE*
 12 *AND POSSESSION OF A WILDLIFE CONSERVATION LICENSE BY PERSONS*
 13 *12 YEARS OF AGE OR OLDER FOR THE RECREATIONAL USE OF STATE*
 14 *LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT*
 15 *BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND*
 16 *PARKS; INCREASING THE FEE FOR WILDLIFE CONSERVATION*
 17 *LICENSES; PROVIDING PENALTIES; PROVIDING FOR DISPOSITION OF*
 18 *THE LICENSE FEES AND PENALTIES; AND AMENDING SECTIONS*
 19 *19-8-504, 77-1-202, 77-1-203, 77-1-204, 77-1-402, 87-1-102,*
 20 *87-1-502, 87-1-601, 87-2-103, 87-2-109, 87-2-202, AND*
 21 *87-2-204, MCA."*

STATEMENT OF INTENT

22
 23
 24 A statement of intent is required for this bill because
 25 77-1-203(3) requires the board of land commissioners to

1 adopt rules closing existing leases of state lands to public
 2 recreational use in certain instances and because [section
 3 14] requires the board to adopt rules governing recreational
 4 use of state lands. It is intended that public recreational
 5 use of state lands be accomplished to the fullest extent
 6 possible.

7 It is also intended that the board adopt rules governing
 8 the actions of the recreational user of state lands. The
 9 rules must require the user to make a reasonable effort to
 10 present the conservation license to any tenant living on the
 11 property and inform the tenant of the type and extent of
 12 recreational use to be made. The rules must require the
 13 recreational user not to litter or otherwise degrade the
 14 leased property and to comply with any reasonable requests
 15 of the tenant regarding such matters as avoidance of
 16 livestock or crops and closing of gates.

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 **Section 1.** Section 19-8-504, MCA, is amended to read:

20 "19-8-504. State's contribution. Each month the state
 21 treasurer shall pay to the account, out of the department of
 22 fish, wildlife, and parks moneys, a sum equal to 7.15% of
 23 the total of all members' salaries, and out of the moneys
 24 collected as fines and forfeited bonds under the provisions
 25 of 87-1-601(1) through (5) or moneys distributed under

3-10-601(4), all such collections are statutorily appropriated to the account until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 2. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser.

(3) For purposes of subsection (1), the following definitions apply:

(a) "Other worthy objects helpful to the well-being of the people of this state" includes the right of the people

to use state lands for recreational purposes.

(b) "Legitimate and reasonable advantage to the state" includes the intangible nonmonetary advantages of public recreational use of state lands and is not limited solely to monetary terms."

Section 3. Section 77-1-203, MCA, is amended to read:

"77-1-203. Multiple-use management -- public use for recreational purposes -- lease requirements. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources; and

(c) the full right of the public to use state public

lands for uses including recreational purposes, including those lands that are leased primarily for other purposes, is accomplished as long as the lands are otherwise legally accessible, except when the board finds after a hearing, by clear and convincing evidence, that:

(i) with respect to a specific lease there is a compelling need to restrict or close public access; or

(ii) there is a compelling need to close access in a specific category of use because public access would be inconsistent with a different use of predominating importance.

(2) The board shall include in all surface leases for grazing, agricultural, or logging purposes a provision requiring the lease to be open for public recreational use, except when public use would interfere with growing crops or would be barred under subsection (1)(c)(i) or (1)(c)(ii).

(3) The board shall by rule prevent public recreational use of public lands that are subject to existing surface leases for grazing, agricultural, or logging purposes, as provided in subsection (1)(c)(i) or (1)(c)(ii).

(4) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use

values."

Section 4. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

Section 5. Section 77-1-402, MCA, is amended to read:

"77-1-402. Basis for classification or reclassification. (1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the

1 capability of the land to support an actual or proposed land
2 use authorized by each classification.

3 (2) It is the duty of the department to classify or
4 reclassify state lands so that no state land will be sold,
5 leased, or used under a different classification from that
6 to which it actually belongs."

7 **Section 6.** Section 87-1-102, MCA, is amended to read:

8 "87-1-102. **Penalties.** (1) A person violating any
9 provision of this title, any other state law pertaining to
10 fish and game, or the orders or rules of the commission or
11 department is, unless a different punishment is expressly
12 provided by law for the violation, guilty of a misdemeanor
13 and shall be fined not less than \$50 or more than \$500,
14 imprisoned in the county jail for not more than 6 months, or
15 both. In addition, the person shall be subject to forfeiture
16 of his license and the privilege to hunt, fish, or trap
17 within this state or to use state lands, as defined in
18 77-1-101, for recreational purposes for a period of not less
19 than 24 months from the date of conviction.

20 (2) (a) A person convicted of unlawfully taking,
21 killing, possessing, transporting, or wasting of a bighorn
22 sheep, moose, wild bison, caribou, mountain goat, or grizzly
23 bear or any part of these animals shall be fined not less
24 than \$500 or more than \$1,000, imprisoned in the county jail
25 for not more than 6 months, or both. In addition, that

1 person shall forfeit any current hunting, fishing, or
2 trapping license issued by this state and the privilege to
3 hunt, fish, or trap in this state for not less than 30
4 months from the date of conviction.

5 (b) A person convicted of unlawfully taking, killing,
6 possessing, or transporting a deer, antelope, elk, mountain
7 lion, or black bear or any part of these animals or wasting
8 a deer, antelope, or elk shall be fined not less than \$300
9 or more than \$1,000, imprisoned in the county jail for not
10 more than 6 months, or both. In addition, that person shall
11 forfeit any current hunting, fishing, or trapping license
12 issued by this state and the privilege to hunt, fish, or
13 trap in this state for not less than 24 months from the date
14 of conviction.

15 (c) A person convicted of unlawfully attempting to
16 trap, take, shoot, or kill a game animal shall be fined not
17 less than \$200 or more than \$600, imprisoned in the county
18 jail for not more than 60 days, or both.

19 (d) A person convicted of unlawfully taking, killing,
20 possessing, transporting, shipping, labeling, packaging, or
21 wasting or unlawfully attempting to take, kill, or possess
22 any game bird, wild turkey, or fish or any part of any such
23 bird or fish or of failure to tag a game animal or game bird
24 as prescribed by law shall be fined not less than \$50 or
25 more than \$200 or imprisoned in the county jail for not more

1 than 30 days, or both.

2 (e) A person convicted of purposely or knowingly
3 taking, killing, possessing, transporting, shipping,
4 labeling, or packaging a fur-bearing animal or pelt of a
5 fur-bearing animal in violation of any provision of this
6 title shall be fined not less than \$50 or more than \$1,000
7 or imprisoned in the county jail for not more than 6 months,
8 or both. In addition, that person shall forfeit any current
9 license and the privilege to hunt, fish, or trap for not
10 less than 24 months from the date of conviction and any
11 pelts possessed unlawfully must be confiscated.

12 (f) A person convicted of hunting, fishing, or trapping
13 while his license is forfeited or his privilege denied shall
14 be imprisoned in the county jail for not less than 5 days or
15 more than 6 months. In addition, that person may be fined
16 not less than \$500 or more than \$1,000.

17 (3) A person convicted or who has forfeited bond or
18 bail under subsection (2) and who has been ordered to pay
19 restitution under the provisions of 87-1-111 may not apply
20 for any special license under Title 87, chapter 2, part 7,
21 or enter any drawing for a special license or permit for a
22 period of 5 years following the date of conviction or
23 restoration of license privileges, whichever is later.

24 (4) Notwithstanding the provision of subsection (1),
25 the penalties provided by this section shall be in addition

1 to any penalties provided in Title 37, chapter 47, and Title
2 87, chapter 4, part 2."

3 **Section 7.** Section 87-1-502, MCA, is amended to read:

4 **"87-1-502. Qualifications, powers, and duties.** (1)
5 Wardens shall be qualified by their experience, training,
6 and skill in protection, conservation, and propagation of
7 wildlife, game, fur-bearing animals, fish, and game birds
8 and interested in this work. They shall devote all of their
9 time for which they are appointed to their official duties.

10 (2) They shall enforce the laws of this state and the
11 rules of the department with reference to the protection,
12 preservation, and propagation of game and fur-bearing
13 animals, fish, and game birds.

14 (3) They shall see that persons who hunt, fish, or take
15 game or fur-bearing animals, game birds, or fish and those
16 persons who make recreational use of state lands, as defined
17 in 77-1-101, have necessary licenses.

18 (4) They shall assist in the protection, conservation,
19 and propagation of fish, game, fur-bearing animals, and game
20 and nongame birds and assist in the planting, distributing,
21 feeding, and care of fish, game, fur-bearing animals, and
22 game and nongame birds. They shall, when ordered by the
23 department, assist in the destruction of predatory animals,
24 birds, and rodents. They shall perform all other duties
25 prescribed by the department and make a monthly report to

the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection."

Section 8. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) Except as provided in this section and in 87-2-204, all All money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state

special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsection (6), all All money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of

surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation.

(6) All money collected or received from fines or forfeited bonds, except money collected or received in a justice's court, for the violation of 87-2-103 or 87-2-109, or both, by the recreational use of state lands without a wildlife conservation license, must be deposited as follows:

(a) 50% in an account in the state special revenue fund for use by the department for the enforcement of 87-2-103 and 87-2-109; and

(b) 50% in the account in the special revenue fund

authorized pursuant to 87-2-204(2) for use by the department of state lands in the management of state lands."

Section 9. Section 87-2-103, MCA, is amended to read:

"87-2-103. License required. It is unlawful for any person to:

(1) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, any game bird, or any fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts thereof, except as herein provided or as provided by the department; or

(2) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish, except at the places and during the periods and in the manner herein defined or as defined by the department; or

(3) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts thereof without first having obtained a proper license or permit from the department to do so; or

(4) trap or snare or attempt to trap or snare predatory

animals or nongame wildlife without a license as prescribed in 87-2-603 if that person is not a resident as defined in 87-2-102; or

(5) use state lands, as defined in 77-1-101, for a recreational purpose without a wildlife conservation license."

Section 10. Section 87-2-109, MCA, is amended to read:

"87-2-109. Carrying and exhibiting license. (1) It is unlawful for any person to whom a license or permit has been issued to fish for or take any fish, or to pursue, hunt, shoot, kill, or take any game bird or game animal, or to attempt to trap, trap, or take any fur-bearing animal in this state, or to use any state lands, as defined in 77-1-101, for a recreational purpose unless he has the license, licenses, or permit in his possession at the time.

(2) It is unlawful to refuse to exhibit a license or permit for inspection to a warden or other officer requesting to see it."

Section 11. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application -- stamp attachment -- fee -- expiration. (1) A wildlife conservation license shall be sold upon written application. The application shall contain the applicant's name, age, occupation, place of residence, post-office address, and length of time in the state of Montana; state whether the applicant is a citizen of the

United States or an alien; and be subscribed by the applicant. The applicant shall present a driver's license or other identification to substantiate the information.

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such rules as the department may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of \$2 \$3.

(4) Licenses issued shall be void after the last day of February next succeeding their issuance."

Section 12. Section 87-2-204, MCA, is amended to read:

"87-2-204. Disposition of wildlife conservation license fees. (1) Except as provided in subsection (2), the ~~The~~ fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the state special revenue fund to the credit of the department in accordance with the provisions of 87-1-601.

(2) Of the fee for a wildlife conservation license, \$1 must be credited as follows:

(a) 50% to an account in the state special revenue fund for use by the department of state lands in the management of state lands as defined in 77-1-101; and

(b) 50% to the public school fund created by Article X,

1 section 2, of the Montana constitution."

2 NEW SECTION. Section 13. Recreational use of state
3 lands by minors under 12 years of age. Resident and
4 nonresident minors under 12 years of age may use state lands
5 as defined in 77-1-101 for any recreational purpose without
6 a wildlife conservation license.

7 NEW SECTION. Section 14. Board to prescribe rules for
8 recreational use of state lands. The board shall adopt rules
9 governing the recreational use of state lands allowed under
10 77-1-203. The rules must be adopted in accordance with the
11 rulemaking provisions of the Montana Administrative
12 Procedure Act. A violation of the rules adopted by the board
13 is a misdemeanor.

14 NEW SECTION. Section 15. Liability of lessee. The
15 provisions of 70-16-302 limiting the liability of a tenant
16 for the recreational use of property leased by that tenant
17 apply to any tenant of state lands used for recreational
18 purposes.

19 NEW SECTION. Section 16. Codification instruction.
20 [Sections 14 and 15] are intended to be codified as an
21 integral part of Title 77, chapter 1, part 2, and the
22 provisions of Title 77, chapter 1, part 2, apply to
23 [sections 14 and 15].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0778, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This bill: 1) revises the laws relating to use of state lands; 2) provides that allowable use of state lands includes recreational use by the public; 3) requires surface leases for grazing, agricultural or logging purposes to allow public recreational use unless certain conditions are met; 4) requires the Board of Land Commissions to open up existing leases to public recreational use with certain exceptions; 5) requires purchase and possession of a wildlife conservation license by persons 12 years of age or older for the recreational use of state lands; 6) provides for enforcement of the license requirement by the wardens of the Department of Fish, Wildlife and Parks; and 7) increases the fee for wildlife conservation licenses from \$2 to \$3 and earmarks 50% of the increase in the conservation license for the Department of State Lands and 50% for the public school fund.

ASSUMPTIONS:Department of Fish, Wildlife & Parks:

1. Current law requires a conservation license as a prerequisite for an individual "purchasing a fishing, hunting, or trapping license". The proposed bill would make it "...unlawful for any person to use state lands...for a recreational purpose without a wildlife conservation license." Therefore, the scope of a conservation license will be expanded beyond hunting and fishing and include all types of recreational activities on state trust land.
2. This will have a substantial but unknown workload impact on the Enforcement Division of the Department of Fish, Wildlife and Parks.
3. Currently, 420,000 conservation licenses are sold annually (based on historic information). There is no estimate of the additional conservation licenses that would be sold to recreationists who are not hunters or anglers but who would utilize trust lands.

Department of State Lands:

4. The 420,000 conservation licenses sold annually by the Department of Fish, Wildlife and Parks will generate \$420,000 per year from the \$1 increase in the cost of the license for transfer to DSL.
5. DSL management costs of the recreational use program would be funded first from 50% of the increased income from conservation licenses, which will be \$210,000 per year. The second funding source for recreational use of trust lands will be fines and forfeitures and the balance will be general fund.

(continued on next page)


ROD SUNDSTED, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE

2-16-91


DAVE BROWN, PRIMARY SPONSOR

DATE

2/18/91

Fiscal Note for HB0778, as introduced

HB 778

6. Assume \$11,250 would be generated from fines and forfeiture bonds resulting from recreational use of state trust lands. One-half or \$5,625 per year would be available for DSL recreational use management costs. This is based on the assumption that the number of citations issued by Fish, Wildlife and Parks would increase by 225 per year. At an average fine of \$50 per citation, the revenue would be \$11,250.
7. DSL administration of this recreational program would require close coordination with existing surface lessees, the Department of Fish, Wildlife and Parks, and the recreational users. Appropriate restrictions, closures, Fish, Wildlife and Parks management plans, damage settlements, hearings and other issues will require planning, implementation, monitoring and enforcement by DSL.
8. The proposed bill will require 6.00 FTE land use specialists (one in each area land office), grade 13; 1.00 FTE land management program specialist, grade 14, located in the Helena office; and 0.50 FTE clerical staff, grade 10.
9. Operating expenses of \$48,500 each fiscal year would include travel, communications, rent and basic supplies.
10. Start-up capital expenditures of \$98,000 in FY92 only include six (6) field vehicles @ \$14,500 each (one for each area office) one personal computer for the program coordinator and office equipment for the new staff.

FISCAL IMPACT:

Department of Fish, Wildlife & Parks:

	F '92			F '93		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Transfers	0	420,000	420,000	0	420,000	420,000
<u>Funding:</u>						
State Special	0	420,000	420,000	0	420,000	420,000

Revenues:

Conservation License Revenue	840,000	1,260,000	420,000	840,000	1,260,000	420,000
------------------------------	---------	-----------	---------	---------	-----------	---------

Department of State Lands:

F.T.E.	0.00	7.50	7.50	0.00	7.50	7.50
Personal Services	0	204,086	204,086	0	205,086	205,086
Operating Costs	0	23,500	23,500	0	23,500	23,500
Capital Outlay	0	98,000	98,000	0	0	0
Total	0	325,586	325,586	0	228,586	228,586

Funding:

General Fund	0	109,961	109,961	0	12,961	12,961
State Special	0	215,625	215,625	0	215,625	215,625
Total	0	325,586	325,586	0	228,586	228,586

Revenue:

Conservation Licenses (02)	0	210,000	210,000	0	210,000	210,000
Fines (02)	0	5,625	5,625	0	5,625	5,625
Public School Fund	0	210,000	210,000	0	210,000	210,000
Total	0	425,625	425,625	0	425,625	425,625

TECHNICAL NOTES:

Department of State Lands:

1. Trust lands administered by the Department of State Lands are subject to the Montana Enabling Act. Under Section 11 of that act, no interest in trust land may be disposed of (sold, leased, or licensed) unless full market value is obtained. Court cases interpret this provision to require monetary compensation to the trust beneficiaries, which are the school system, certain units of the university system, and certain other institutions. Several portions of HB0778 may violate Section 11 of the Enabling Act:
 - a) Section 2(3) - This section authorizes the Board of Land Commissioners to manage lands for non-monetary benefits.
 - b) Section 2(3) - This section authorizes and may require the Board of Land Commissioners to manage lands for the benefit of non-beneficiaries to the detriment of the beneficiaries.
 - c) Section 3(1)(c) and Section 12(a) - To the extent that recreational access is an interest in state lands, the trusts must receive full market value for that access. If 50 cents per conservation license holder is below full market value, the granting of public access violates the Enabling Act.
2. The Montana Constitution, Article X, Section 11, provides that trust lands must be held and disposed of for the purposes for which they were granted and may not be disposed of (sold, leased, or licensed) at less than full market value. Thus, the defects discussed in (1)(b) and (c) above are also constitutional defects.
3. The Pittman-Robinson and Dingell-Johnson Acts, under which the Department of Fish, Wildlife and Parks receives federal fish and wildlife monies, restrict use of conservation license monies to hunting and fishing use. The bill may violate these restrictions and jeopardize federal funds by paying for other types of recreational access.
4. Section 3(1)(c) authorizes the public to "use state public lands for uses including recreational purposes..." Thus, "use" is not limited to recreational use and, if taken literally, authorizes the public to engage in all uses of state land.
5. Section 3(1)(c) requires a hearing before the Board of Land Commissioners. The language should be clarified as to whether this is a legislative-type hearing or an adjudicatory contested case hearing under the Montana Administrative Procedure Act.
6. The Statement of Intent and section 3(2) refer to logging leases. The Department of State Lands does not issue logging leases. It sells timber on its forested lands.
7. Section 4 appears to conflict with the remainder of the bill. Section 4 presumably authorizes the Board of Land Commissioners to engage in multiple use leasing, probably for recreational purposes. Section 3 would open state lands to public use for recreational purposes to the general public. Therefore, recreational leasing could not be implemented.

Department of Fish, Wildlife & Parks:

8. Language is needed to clarify that revenues from the conservation license can only be used for the benefit of sport hunters and anglers. If conservation license revenues were used to finance non-hunter or non-angler access, the department would be in violation of federal diversion laws and could lose \$7 million in federal wildlife and fisheries restoration funds.
9. Effective date of this legislation should be March 1, 1992 (beginning of the license year).

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN BOB RANEY, on February 18, 1991, at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzienried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 401 AND HB 778

Presentation and Opening Statement by Sponsor:

REP. DAVE BROWN, HD 72 - Butte, said HB 401 is the State Land Board's bill, and HB 778 is legislation he produced. He is in an unusual position carrying both bills.

HB 401 would provide statutory authority to the Board of Land Commissioners to adopt a program for recreational use of state lands.

In 1988, the Coalition for Appropriate Management of State Lands filed suit in Helena District Court, asking that the Board of

Land Commissioners be required to open state lands to public access for recreational purposes. After negotiations broke down, the Board of Land Commissioners decided to settle the matter administratively.

In May 1990, the Commissioner of State Lands held public meetings in Glasgow, Miles City, Billings, Great Falls, Butte, Bozeman, Kalispell and Missoula. The commissioner reported findings to the Board in August 1990 and suggested alternative recreational-access programs the Board could adopt.

The Board instructed the commissioner to prepare an environmental assessment under the Montana Environmental Policy Act. The Board's intention was to choose one of the alternatives, and seek necessary funding and legislation after the assessment process was completed. This was not done because the assessment indicated a formal Environmental Impact Statement (EIS) was needed.

The Board instructed the Department to seek funding for the EIS, and legislation authorizing the Board to implement whatever recreational access it deemed most appropriate after completion of the EIS and acceptance of further public comment.

HB 401 would accomplish the second purpose. Section 1 is the heart of the bill. It authorizes the Board to implement various programs. He reviewed the bill.

HB 778 is in response to the state attorney general's failure to strictly interpret the statute regarding this issue. Sportsmen, environmental groups and others helped develop the bill. HB 778 declares by statute that all state lands are open to recreational use in the state. It allows the State Lands Board to close any section it deems appropriate to close, such as cropland, cabin sites, wildlife habitat and isolated sections within private property.

The bill establishes a land-access stamp, which would be a \$1 tax on each conservation license. The fiscal note indicates the stamp would raise more than \$40,000 per year. The public education trust must be compensated for recreational use of state lands. The question is how much. While HB 778 does not account for littering or damage to public lands, the state needs to provide such compensation. Lessees have every right to expect protection of leased lands.

Proponents' and Opponents' Testimony:

Dennis Casey, Department of State Lands (DSL) Commissioner, reviewed historical developments in the multiple-use controversy, and provisions of HB 401. EXHIBIT 1

REP. BROWN said he forgot to mention a key provision of HB 778. By the way it is drafted, the state would seriously jeopardize federal hunting and fishing revenues. He will provide amendments

to the committee to separate what is collected for access stamps from money collected for conservation licenses."

John Gibson, Billings Rod and Gun Club, supported HB 778.

EXHIBIT 2 He submitted information on current access policies.

EXHIBITS 3-4

Tom Loftsgaard, Land Management Council representative and leaseholder, supported HB 401 and opposed HB 778. EXHIBIT 5

Garth Jacobson, Secretary of State's Office, said there is general agreement among Montanans that a solution should be worked out between leaseholders and recreational interests to enable reasonable access to state lands. This is not an issue that should be settled by the courts. The two sides are not far apart in their positions. Recreationists should have access to state lands and compensate the school trust for that access. Leaseholders should be compensated for damages. The Legislature should develop the framework for the compromise and the State Lands Board should fill in the details.

Tony Schoonen, Montana Wildlife Federation, supported HB 778.

EXHIBIT 6 He submitted informational handouts on the land-access issue. EXHIBITS 7-8

Ron Stevens, Public Land Access Association, supported HB 778 and opposed HB 401. EXHIBIT 9

Jack Jones, Skyline Sportsmen Association and Ducks Unlimited, said Montanans are willing to pay to use state lands. He supported HB 778, opposed HB 401 and submitted copies of a deposition regarding state access. EXHIBIT 10

Jack Atcheson, Butte resident, supported HB 778. He said Montana has had a multiple-use law since 1969. It says the state shall manage state lands so that they are used in the best combination to meet the needs of the people. Leases themselves include multiple-use language. Despite this, the state has not managed its lands under a multiple-use concept.

Bill Holdorf, Skyline Sportsmen's Association in Butte, said recreationists have been blamed for spreading knapweed. It came to Montana in 1922 around Missoula and spread to Eastern Montana during the drought of 1984-85. All kinds of people are spreading knapweed. It is spread by hay and logging trucks, animals, wagons, the United Parcel Service and mail delivery trucks. He submitted background information on knapweed and a letter from the association's president to the Department of Agriculture. EXHIBIT 11-12

Bob Bugni, Prickly Pear Sportsmen Association and the Montana Coalition for Appropriate Management of State Lands, supported HB 778 and opposed HB 401. He submitted written testimony and a copy of a financial-compliance audit of DSL. EXHIBIT 13-14

Gary Sturm, Prickly Pear Sportsmen Association, said 86 percent of the people who attended the meetings held by the Department were in support of state access. The issue is simple. The people who own the land want use of the land. He submitted a written witness statement. EXHIBIT 15

Paul Berg, Southeastern Montana Sportsmen Association, reviewed a newspaper article about school funding losses from low lease rates, EXHIBIT 16; a letter to Superintendent of Public Instruction Nancy Keenan from Madalyn Quinlan regarding land board "giveaways," EXHIBIT 17; a copy of the Rangeland Resources act, EXHIBIT 18; a statement by the Montana Coalition for Appropriate Management of State Lands presented at the Montana Wildlife Federation meeting in May 1989, EXHIBIT 19; a letter to Gov. Stan Stephens from the Southeastern Montana Sportsmen Association regarding access to state lands, EXHIBIT 20; a summary of testimony on behalf of the Billings Rod and Gun Club and Southeastern Montana Sportsmen Association, EXHIBIT 21; and a witness statement, EXHIBIT 22.

John Roylance, Whitehall resident, supported HB 778. He said administration of state lands has been discriminatory in the past. A survey by DSL showed 86 percent of Montanans want open access. He submitted a newspaper editorial that appeared in the Bozeman Daily Chronicle. EXHIBIT 23

Vince Fischer, Skyline Sportsmen Association Board of Directors, supported HB 778. EXHIBIT 24

Noel Rosetta, Helena resident, supported HB 778. EXHIBIT 25

Lorry Thomas, Anaconda Sportsmen Club, supported HB 778 and opposed HB 401. He submitted a statement by the Montana Wildlife Federation made at a meeting in Lewistown in August 1989. EXHIBIT 26

Bill Fairhurst, Three Forks resident, said proponents of HB 778 want the committee to know that Montana has an exclusive-use tax, otherwise known as a privilege tax. When state lands are posted, they fall under this tax. He submitted a copy of the law and a 1987 letter from the Department of Revenue regarding privilege-use taxation. EXHIBIT 27

Alan W. Rollo, Montana Coalition for Appropriate Management of State Land, Great Falls, did not testify but submitted written testimony in support of HB 778. EXHIBIT 27A

John Gaffee, did not testify but submitted testimony in support of multiple use on state lands. EXHIBIT 27B.

Opponents' Testimony:

Jim Peterson, Montana Stockgrowers Association (MSGA), Montana Cattle Feeders Association and the Montana Wool Growers

Association, supported HB 401 and opposed HB 778. EXHIBIT 28

Ward Jackson, rancher, opposed HB 778. He said it discriminates against youth over the age of 12. Land is for the benefit and education of the students of Montana. If HB 778 is passed, he will be forced to put a fence between his deeded land and state land. This would restrict game movement and force him to manage the land differently, which may reduce income to the state land trust. He would not be able to control hunting on the state land if HB 778 is passed. HB 401 allows him to control hunting. Birds will be adversely affected if indiscriminate hunting is allowed on state land. He would prefer to lease state recreation rights if he has to be responsible for weed control. He doesn't want hunters coming to his home to prove they have purchased the state stamp. HB 401 will generate more money for the state.

Robert DuPea, White Sulphur Springs farmer and rancher, supported HB 401 and opposed HB 778. EXHIBIT 29

Bob Fouhy, Land Management Council, supported HB 401 and opposed HB 778. EXHIBIT 30

Lorna Frank, Montana Farm Bureau, said the bureau agrees with the statement made by Mr. Peterson of MSGA and supports that position. EXHIBIT 31

Carol Moser, Montana Cattle Women, a rancher and state leaseholder, supported HB 401 and opposed HB 778.

Kay Norenberg, Women Involved in Farm Economics, supported HB 401 and opposed HB 778.

REP. LINDA NELSON did not testify but submitted a petition from residents of Daniels County opposing HB 778. EXHIBIT 32

Questions From Committee Members:

REP. ELLISON asked if HB 778 would bypass the EIS process. REP. BROWN said the bill would statutorily say that all public lands are open to public access for recreation and other purposes. A hearing would be required to close any of those lands.

REP. ELLISON asked REP. BROWN which provisions in HB 401 he doesn't agree with. REP. BROWN said he disagrees with the subsidy provision for leaseholders and the need for an EIS. He hopes to bring a compromise bill to the subcommittee.

REP. ELLISON asked Mr. Casey if DSL will be involved in a lawsuit over whether an EIS is necessary, if HB 778 passes. Mr. Casey said he couldn't predict what would happen.

REP. ELLISON asked if passage of HB 778 would enable DSL to retroactively change weed and fire control provisions of existing leases. Mr. Casey said that under DSL's preliminary plan, the

agency indicated funding would be needed for weed control. DSL has some ability to change leases in midterm. He doesn't know if the agency can strike those provisions.

REP. RANEY appointed REP. COHEN as chairman of the subcommittee. REPS. FAGG, REAM, ELLISON and DOLEZAL will serve as members.

REP. FOSTER said Mr. Jackson testified that he would have to build a fence to separate his deeded land from state trust land if HB 778 passes. He asked REP. BROWN if the bill addresses who would pay for the fence. REP. BROWN said he didn't think so. It wasn't intended to, even if it did. Flexibility language in whatever legislation comes about allows the State Land Board to set rules to handle such situations. He sees no need to put that in the statute.

REP. RANEY said opponents expressed concern about compensation for potential damage to property, equipment, stock, etc. He asked REP. BROWN if he had any thoughts on the subject. REP. BROWN said some people raised constitutional questions about how money from the education trust can be diverted for other purposes. HB 778 avoids constitutional problems by collecting and distributing the money before it goes into the trust. Money is needed to finance administration of the program and to mitigate problems. Federal funds for fire fighting and fees collected through car registration also are available to deal with this problem. There are roughly 4.1 million acres of state land in Montana. Leases bring in approximately \$4.1 million, or \$1 per acre. It could be reasonably argued that \$1 per person for public access to those lands is too much compensation. He won't try to argue the point. It needs to be worked out in subcommittee.

REP. RANEY asked John North, DSL Chief Legal Counsel, how DSL could determine if a recreationist caused damage, who would act as the police force and how compensation would be handled. Mr. North said the same procedures used by Fish and Game would be used to determine who caused the damage. Leaseholders would have to police their own holdings. The Department of Fish, Wildlife and Parks (FWP) would have enforcement responsibility and be called in after damage occurred to determine the responsible party. Under HB 401, DSL would use a portion of the revenues to reimburse the lessee. Under existing law, the state could go against a responsible party. HB 778 does not include a compensation mechanism. It would be up to the lessee to determine who damaged the property and to pursue recovery. Criminal-mischief statutes would be available if it could be shown the damage was done intentionally.

REP. O'KEEFE asked K.L. Cool, FWP Director, how HB 401 and HB 778 would affect management of game species. Mr. Cool said hunting regulations are based on hunting districts. Recommendations to the commission are based on game populations within a district, regardless of ownership of the land. Access becomes an important issue so that a sufficient harvest can be maintained to control

and manage the resource. The agency considers state and private lands in the same category. Passage of either bill will not adversely affect management.

Closing by Sponsor:

REP. BROWN said concerns raised by opponents are legitimate and need to be worked out. He believes a compromise bill can be developed. The compensation issue needs to be kept separate. The main goal is to establish decent public access to state lands where private lessees are blocking access to federal lands, and where hunting may or may not be available on those private lands. He hopes to bring the subcommittee a compromise bill that will garner general support from both sides.

HEARING ON HB 351

Presentation and Opening Statement by Sponsor:

REP. COHEN, HD 3, Whitefish, said HB 351 addresses an omission from HB 678, which came out of an interim study on forest practices and was passed last session. HB 351 would include wildlife as a consideration in Best Management Practices (BMPs). He reviewed the bill.

He noted Montana forests provide important habitat for wildlife. Forests are given special treatment in the state's tax codes because they are important to Montana's quality of life. Opponents of HB 351 will say that inserting wildlife into BMPs will ruin the timber industry. In Oregon, the Bureau of Land Management does not prohibit timber harvests on any of its land because the kinds of cuts and methods of harvest have been adjusted to take wildlife into consideration. He urged Montana to protect its wildlife as timber harvesting progresses.

Proponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, supported HB 351. EXHIBIT 33

Valerie Horton, Montana Wildlife Federation, supported HB 351 for reasons previously stated.

Jeff Jahnke, DSL Forest Management Bureau Chief, supported HB 351. EXHIBIT 34

Jim Jensen, Montana Environmental Information Center (MEIC), said he is confident DSL can come up with reasonable BMPs under HB 351. Some opponents will say the bill is too general, but DSL can determine what BMPs are appropriate for Montana. MEIC disagrees with the Montana Audubon Legislative Fund, which believes BMPs should become mandatory at some point. MEIC believes the time is now. Nonetheless, MEIC supports HB 351.

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 2-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

EXHIBIT

2

DATE 2-18-91

HB 778

TESTIMONY SUPPORTING PUBLIC ACCESS TO MONTANA STATE SCHOOL LAND

HB 778

By John Gibson, Secretary Billings Rod And Gun Club.

One of the arguments used to discourage public access to Montana State School Land involves the intolerable amount of vandalism and other damage that would occur to property that the lessee leaves upon the land.

I would like you to look at this argument a little closer.

The Custer National Forest, where I worked for 15 years provides grazing for over 130,000 livestock on about 2 million acres of land. There are more than a thousand structural range improvements on this land. These structures include windmill, solar panels and propane tanks to power water pumps, stock water tanks, loading corrals, oilers, and thousand of miles of fences and water lines. Every one of these structures is on land where the public has year-round access. There is almost no damage to these improvements as a result of hunters, fishermen and other recreation users.

Another example of multiple uses was cited by the District Ranger of the Sheridan District, Beaverhead National Forest. During General Big Game Season an average of 156 vehicles per day enter the Upper Ruby Grazing Allotment. Most years show no damage to range improvements attributed to hunters.

It is my opinion that there is little substance to this argument or any argument that suggests a public resource must be protected from the public by restricting it's use to a select few.

As I understand it over 70% of the comments from the public hearings favored reasonable public access to Montana State School Lands. Let government of the people prevail.

I ask you, on behalf of the Billings Rod and Gun Club and many other Montana citizens, to open this land to the public. It is time we followed the example of the majority of other western states and began to practice Multiple Use on public land.

Support HB 778

John A. Gibson

HOUSE OF REPRESENTATIVES

EXHIBIT 2a
DATE 2-18-91
HB 401 + 778

WITNESS STATEMENT

PLEASE PRINT

NAME John R. Gibson BUDGET _____ADDRESS 2518 Broadwater Ave. Billings MT 59102WHOM DO YOU REPRESENT? Billings Rod & Gun ClubSUPPORT HB 778 OPPOSE _____ AMEND _____

COMMENTS:

U.S. Forest Service records show no
significant vandalism or damage to range
structures upon lands open to public
access. There is no reason to believe
there would be significant damage to these
structures on school lands if the public
had access.



State of Montana
Office of the Governor
Helena, Montana 59620

EXHIBIT 3
DATE 2-18-91
HB 401 & 778

TED SCHWINDEN
GOVERNOR

October 8, 1985

Answer

Mr. Jerry Manley
1806 Cobban
Butte, Montana 59701

Dear Mr. Manley:

Since you were involved with House Bill 265, you can appreciate the sensitivity of opening access to state school trust lands. Negotiations between the Departments of State Lands and Fish, Wildlife and Parks have continued and the issues narrowed. Hopefully, a resolution can be reached which is beneficial to sportsmen and to the school trust.

As Mr. Woodgerd told you, and Mr. Hemmer has reaffirmed, a lessee may not charge for access across state land. That action would be a violation of their lease and could result in lease cancellation. Likewise, if the lessee opens his lease to hunting, he may not restrict the access.

The Department of State Land's policy is to return all calls as promptly as possible. Prior to writing the November, 1984 letter you attached, Dennis Hemmer did try to call you without success. He was unaware of any other calls.

I assure you that progress has been made on the hunting and fishing access to state lands issue, and urge your continued cooperation. If you have further questions, please stop by my office for a visit.

Sincerely,

Ted Schwinden
TED SCHWINDEN
Governor

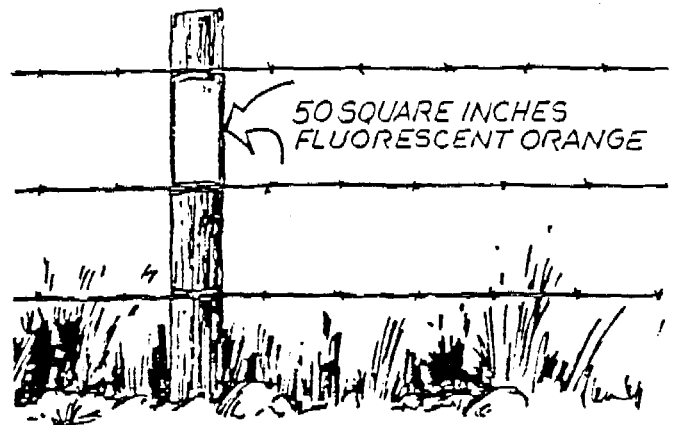
EXHIBIT 4
DATE 2-18-91
HB 778 & 401

NEW TRESPASS LEGISLATION

The 1985 Legislature addressed the issue of trespass in passing House Bill 911. The new law took effect on April 22, 1985.

The trespass law. This law states that lands can be closed to the public either by posting the land or through verbal communication by landowners or their agents. However, even if lands are not posted, recreationists are urged to seek landowner permission before pursuing any activities on private lands. *If permission is granted, the landowner may revoke the permission by personal communication at any time.* Also, because the posting of a notice closing land may, in some cases, revoke privileges previously extended, recreationists are urged to recontact landowners whenever new posting is observed.

Posting requirements. Notice denying entry to private land must consist of written notice on a post, structure or natural object or of notice by painting a post, structure or natural object with at least 50 square inches of fluorescent orange paint. In the case of a metal fencepost, the entire post must be painted. This notice must be placed at each outer gate and all normal points of access to the property, as well as on both sides of a stream where it crosses an outer property boundary line. In cases where land ownership is on just one side of a stream, only that side needs to be posted.



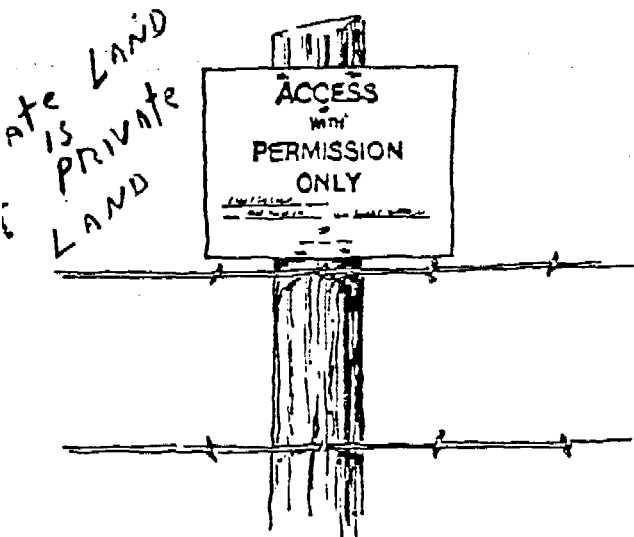
What does the new law mean? Because landowners are no longer required to post the entire perimeter of their lands to deny access, it is the responsibility of the recreationist to determine whether private lands are posted. *If lands are posted, it is the recreationist's responsibility to obtain permission from landowners before recreating on these lands.*

The new law does not change the requirement that *all big game hunters must obtain permission from landowners before hunting on private lands.* Permission is required even if the lands aren't posted.

Enforcement of the law. The law also extends the authority of state game wardens to enforce the criminal mischief, criminal trespass and litter laws to all lands being used by the public for recreational purposes. Recreational purposes are defined in the law to include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking and other pleasure expeditions.

Penalties. As stated in Montana law, any person who knowingly enters or remains unlawfully in or upon the premises of another will be guilty of criminal trespass and, if convicted, will be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

Assistance for landowners. Landowners requiring the assistance of law enforcement officers as it relates to this new law should call either their local game warden or



*This is just one of several signs offered free-of-charge to landowners by the Department of Fish, Wildlife and Parks. For information, contact the Department of Fish, Wildlife and Parks.

court pursuant to 87-1-111 through 87-1-113 must be remitted to the state treasurer for deposit in the state special revenue fund as provided in 87-1-601(1).

History: En. Sec. 4, Ch. 523, L. 1987.

Part 2

Department of Fish, Wildlife, and Parks

87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) It may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is hereby authorized to make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of chapter 2 as in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state.

History: Ap. p. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R.C.M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; re-en. Sec. 3653, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1941; amd. Sec. 1, Ch. 40, L. 1951; amd. Sec. 1, Ch. 157, L. 1955; amd. Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; amd. Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; amd. Sec. 1, Ch. 344, L. 1969; amd.

EXHIBIT 5
DATE 2-18-91
HB 401 & 778

MR. CHAIRMAN AND COMMITTEE MEMBERS:

I'M TOM LOFTSGAARD A LEASEHOLDER AND REPRESENT THE LAND MANAGEMENT COUNCIL, WHICH IS A ORGANIZATION OF STATE LAND LEASEHOLDERS.

THE STATE LAND LESSEES ARE BOUND BY CONTRACT TO MANAGE THE LAND, FOR THE COMMISSIONERS, WITHIN THEIR TERMS AND CONDITIONS OF THE LEASE, AND OTHER DEPARTMENTAL POLICIES. THE TERMS AND CONDITIONS WHICH ARE OF MAJOR CONCERN, WHEN THE STATE LAND IS SHARED BY RECREATIONALISTS AND AGRICULTURE ARE:

TERM 8: IMPROVEMENTS- THE LESSEE MAY PLACE A REASONABLE AMOUNT OF IMPROVEMENTS UPON THE LANDS UNDER THIS LEASE UPON APPROVAL OF AN IMPROVEMENT PERMIT BY THE DEPARTMENT. A REPORT OF PROPOSED IMPROVEMENTS, CONTAINING SUCH INFORMATION AS THE COMMISSIONER MAY REQUEST CONCERNING THE COST OF THE IMPROVEMENTS, THEIR SUITABLENESS FOR THE USES ORDINARILY MADE OF THE LAND, AND THEIR CHARACTER WHETHER FIXED OR MOVABLE, SHALL BE SUBMITTED TO THE COMMISSIONER BEFORE INSTALLATION THEREOF ON THE PREMISES. FAILURE TO OBTAIN APPROVAL PRIOR TO PLACEMENT OF THE IMPROVEMENT MAY RESULT IN SUCH IMPROVEMENTS NOT BEING RECOGNIZED BY THE DEPARTMENT FOR PURPOSES OF REIMBURSEMENT OF SUCH IMPROVEMENTS. IN ADDITION, PLACING IMPROVEMENTS ON STATE LAND WITHOUT RECEIVING PRIOR APPROVAL, MAY RESULT IN CANCELLATION OF THE LEASE.

TERM 16: NOXIOUS WEEDS AND PESTS-THE LESSEE AGREES, AT HIS OWN EXPENSE AND COST, TO KEEP THE LAND FREE FROM NOXIOUS

WEEDS, AND IF NOXIOUS WEEDS ARE PRESENT, THEN CHEMICAL APPLICATION OR OTHER APPROPRIATE WEED CONTROL MEASURES MUST OCCUR IN TIME TO PREVENT SEED-SET ACCORDING TO STATE LAW AND TO EXTERMINATE PESTS TO THE EXTENT AS REQUIRED BY THE DEPARTMENT. IN THE EVENT THE LAND DESCRIBED IN THIS LEASE SHALL BE INCLUDED IN A WEED CONTROL AND WEED SEED EXTERMINATION DISTRICT, THE LESSEE SHALL BE REQUIRED TO COMPLY WITH THE PROVISIONS OF SECTION 77-6-114, MCA, WHICH PROVIDES AS FOLLOWS. IT SHALL BE THE DUTY OF THE BOARD IN LEASING ANY AGRICULTURAL STATE LAND TO PROVIDE IN SUCH LEASE, THAT THE LESSEE OF LANDS SO LEASED LYING WITHIN THE BOUNDARIES OF ANY NOXIOUS WEED CONTROL AND WEED SEED EXTERMINATION DISTRICT SHALL ASSUME AND PAY ALL ASSESSMENTS AND TAXES LEVIED BY THE BOARD OF COUNTY COMMISSIONERS FOR SUCH DISTRICT ON SUCH STATE LANDS, AND SUCH ASSESSMENTS AND TAX LEVY SHALL BE IMPOSED ON SUCH LESSEE AS A PERSONAL PROPERTY TAX AND SHALL BE COLLECTED BY THE COUNTY TREASURER IN THE SAME MANNER AS REGULAR PROPERTY TAXES ARE COLLECTED. FAILURE TO COMPLY WITH THIS PROVISION WHEN DIRECTED TO DO SO BY THE DEPARTMENT MAY RESULT IN CANCELLATION OF THE ENTIRE LEASE.

TERM 17: FIRE PREVENTION AND SUPPRESSION-THE LESSEE ASSUMES ALL RESPONSIBILITY FOR CARRYING ON AT HIS OWN COST AND EXPENSE ALL FIRE PREVENTION AND SUPPRESSION WORK NECESSARY OR REQUIRED TO PROTECT FORAGE, TREES, BUILDINGS AND STRUCTURES ON THE LAND.

TERM 21: INDEMNIFICATION-THE LESSEE AGREES TO SAVE HARMLESS AND INDEMNIFY THE STATE OF MONTANA FOR ANY LOSSES TO THE STATE OCCASIONED BY THE LEVY OF ANY PENALTIES, FINES, CHARGES OR ASSESSMENTS MADE AGAINST THE ABOVE LANDS OR CROPS GROWN UPON THE LANDS, BY THE U. S. GOVERNMENT BECAUSE OF ANY VIOLATION OF OR NONCOMPLIANCE WITH, ANY FEDERAL FARM PROGRAM BY THE LESSEE.

THE PROBLEMS:

IMPROVEMENTS: THE STATE LAND LESSEE OWNS ALL THE IMPROVEMENTS ON THE LEASE. THIS INCLUDES BUILDINGS, FENCES, SPRING DEVELOPMENTS, WELLS, DAMS, DUGOUTS, IRRIGATION SYSTEMS, RANGE IMPROVEMENTS, SUMMERFALLOW, CROPS, SHELTERBELTS, AND ETC.. THESE IMPROVEMENTS ARE PERSONAL PROPERTY AND NO PERSON HAS ANY RIGHT TO USE OR ABUSE THEM WITHOUT THE OWNERS PERMISSION.

NOXIOUS WEEDS AND PESTS: BY GRANTING OPEN PUBLIC ACCESS THE LESSEE WILL NOT HAVE ALL THE CONTROL OVER THE POSSIBILITY OF NOXIOUS WEED INFESTATION ON THEIR LEASE. THE COSTS INVOLVED IN CONTROLLING NOXIOUS WEEDS CAN BE ASTRONOMICAL. CONTROLLING ONE INFESTATION, AND IT NEED NOT BE LARGE, COULD ADD UP TO THE COST OF A NEW 4X4 AND THESE WEEDS CANNOT BE ERADICATED IN ONE OR EVEN TWO YEARS.

FIRE PREVENTION AND SUPPRESSION: GRANTING OPEN ACCESS, THE LESSEE'S LIABILITY IN THIS TERM AND CONDITION COULD BE UNBELIEVABLE. HOW MANY FIRES ARE CAUSED EACH YEAR BY

RECREATIONALISTS IN MONTANA? WE ARE RESPONSIBLE FOR FIRES CAUSED BY NATURE, OURSELVES OR BY OTHERS. IF THE GRASS IS BURNED BY A FIRE, CAUSED BY RECREATIONALISTS, HOW WILL THE LESSEE BE COMPENSATED FOR THE LOSS OF GRAZING ALREADY PAID FOR AND THE LOSS OF THE IMPROVEMENTS CONSUMED BY THE FIRE.

INDEMNIFICATION: UNDER THE FEDERAL FARM PROGRAM, CONSERVATION RESERVE PROGRAM AND CONSERVATION COMPLIANCE LAWS; THERE CAN BE EXPOSURE OF OUR LIABILITY WHEN ACCESS IS GRANTED. WE ARE BOUND BY CONTRACT TO THE FEDERAL GOVERNMENT TO MAINTAIN COVER ON AGRICULTURAL LAND TO PREVENT EROSION. IF A FIRE CAUSED BY RECREATIONALISTS BURNS THE STUBBLE AND LEAVES THE LAND BARE, WHICH PUTS THE LESSEE AND THE STATE OUT OF COMPLIANCE, WHO WILL COVER THE REPAYMENT OF BENEFITS AND PENALTIES ASSESSED BY THE FEDERAL GOVERNMENT?

OTHER: WHAT IS THE LESSEE LEASING THIS LAND FOR? THE DEPARTMENT OF STATE LANDS IS SELLING, TO THE LESSEE, ALL OF THE FORAGE GROWN ON STATE GRAZING LANDS FOR THE GRAZING OF LIVESTOCK. IF WE LEAVE TOO MUCH, THEY RAISE OUR RENT. IF THE NEXT YEAR A DROUGHT OCCURS AND THE AMOUNT OF FORAGE WE PAID FOR WAS NOT GROWN, WE PAY THE RENT. IF A FIRE BURNED THE FORAGE, WHETHER STARTED BY NATURE OR HUMANS, WE PAY THE RENT. IF THIS FORAGE WHICH THE LESSEE HAS PAID FOR IS TRAMPLED BY THE PUBLIC WITH THEIR OFF-ROAD VEHICLES OR CONSUMED BY WILDLIFE, WE PAY THE RENT.

THE LESSEE LEASES THE AGRICULTURAL LAND TO RAISE CROPS...AND IF MOTHER NATURE HELPS WE CAN HAVE A BOUNTIFUL HARVEST. WE PLACE THE NECESSARY SEED, FERTILIZER, CHEMICALS, TILLAGE AND HARVEST OPERATIONS TO RAISE THESE CROPS. THE STATE RECEIVES A SHARE OF THESE CROPS OR CASH PAYMENT FOR RENT. THIS RENT GOES INTO THE SCHOOL TRUST FUND. IS IT THE PUBLIC

DATE 2-18-91

HB 401, 778

RIGHT TO TRAMPLE AND DESTROY THE CROP WITH NO REGARD TO THE LESSEE AND THE TRUST? THAT SUMMERFALLOW OR STUBBLE, WHICH IN MANY CASES IS SEEDED TO WINTER GRAINS, THAT THE PUBLIC LIKES TO DRIVE UPON, IS NEXT YEARS CROP. EXTRA VEHICLE TRAFFIC ON HAYLAND DOES NOT HELP IT'S PRODUCTIVITY EITHER.

THE LESSEE OF SCHOOL TRUST LAND IS HELD DIRECTLY RESPONSIBLE FOR THE PHYSICAL APPEARANCE OF THE LEASE.

ANOTHER MAJOR CONCERN TO LESSEES IS THE FACT THAT LIVESTOCK GRAZING UPON STATE LANDS HAVE BEEN SHOT DURING HUNTING SEASON EVERY YEAR. (TWO COWS WERE KILLED IN OUR NEIGHBORHOOD LAST FALL). IN AN AREA SUCH AS OURS OPEN ACCESS WILL INCREASE THE AMOUNT OF HUNTERS AND VIRTUALLY INSURE THAT THIS PROBLEM WILL BECOME MUCH WORSE.

THERE WILL BE SOME CONSIDERATION AND RELUCTANCE GIVEN ON THE PART OF FUTURE SURFACE USE LESSEES, TO EVEN LEASE THIS LAND WHEN IT CARRYS STIPULATIONS WHICH THEY CANNOT PARTLY CONTROL BECAUSE OF THE LARGE PERSONAL INVESTMENT WHICH IS CURRENTLY PLACED UPON SCHOOL TRUST LAND.

AGRICULTURE IS THE LARGEST INDUSTRY IN MONTANA. THE IMPACT OF THESE BILLS ON AGRICULTURE AND THE SCHOOL TRUST IS IMPERATIVE ENOUGH; WE WOULD ASK THE COMMITTEE; THAT SINCE THE BOARD OF LAND COMMISSIONERS HAS ASKED FOR AN E.I.S. ON PUBLIC ACCESS, THAT IT BE ONLY PRUDENT AND RESPONSIBLE TO COMPLY WITH THEIR ACTIONS.

FOR THESE REASONS WE SUPPORT THE CONCEPT OF H.B.401 AND OPPOSE H.B.778.

THANK YOU.

Brief introduction - Tony Schooner
Representing the M.W.F.

Most of the M.W.F. affiliates are members of the State Lands Coalition, but several of them could not attend the meeting today.

I will turn in a letter from the Sportsmen's Club in Great Falls who are opposing H.B. 401 and endorse H.B. 778.

The Federation has been involved in working for recreational access on state school lands for nearly a quarter of a century but to no avail. We are no further along today than we were 25 years ago. Delays, excuses, broken promises ~~were~~ ^{are} all that we have to show for our efforts.

Refer to the maps on each wall -

Before the lawsuit was filed in March of 1988 - The Coalition for appropriate management paid ~~a~~ ^a lawyer, Jim Goetz, to try to negotiate a settlement with the agricultural groups, but to no avail. The only other alternative was to go to court.

The case was supposed to go to court 1st July - but the Coalition opted to try again for an out of court settlement.

The legislature seems to be our only hope to settle out of court and maybe the future of this state.

million dollars for an E.T.S.,

I would like to submit some -
important articles for ~~the~~ consideration
~~for~~ by the committee.

~~The~~ Chairman Aracy, with your
approval I will line up our proposed
of H.B. - 778 to save time

Thank you

THE MONTANA GAME WARDEN

EXHIBIT 7

DATE 2-18-91

HB 778,401



PREMIER ISSUE
Complimentary Copy

APWEED

sportsmen, mailmen, UPS, loggers and ranchers and knapweed. According to a pamphlet provided by Soil Conservation Service of Montana, knapweed has been introduced to near areas by the movement of contaminated seed and hay. These problems were magnified by the large shipment of hay from western to eastern Montana during the 1984 and 1985 drought.

DAMAGE TO STATE LAND

It is not legal to damage the property of another. Therefore, the lessee is protected by the laws of Montana. It is unlikely that the public would damage State public lands any more than they damage BLM or Forest Service lands. Neither of these agencies reports too many problems. Calving areas or other such sites could be damaged at certain times by special permit.

AGRICULTURE

Only 12% of the entire 5.2 million acres of State land is utilized for agriculture, mostly in three counties. We remember that crops are only in the field during summer.

NONRESIDENT COMPETITION

Most of the leases checked by the Coalition for Access are actually controlled by a nonresident, someone who makes access and makes money in Montana, and probably does their banking in Texas. It is amazing that the big ranchers of Montana don't rise up and demand that these low cost grazing leases be held for the young people of Montana, not for the big corporations in Texas and California.

The public is not asking for access across private property to reach State land, only for the legal right to their land if it can be reached by legal means, just like other public lands...the US Forest Service and the Bureau of Land Management.

SUBSIDIES

Last year on a ranch in eastern Montana, 22 Texas lawyers were caught in a situation where each lawyer received about \$900,000 in subsidies. The tax payer was in the pockets of nonresidents. Do large, nonresident corporations qualify as a depressed farmer who should be paying low grazing fees to the State? Why aren't these people, who can afford to buy their Montana lands, paying full value for the privilege? Where the stock industry is a dying industry, the real estate business is big time. If the land can't be sold, it is leased for the exclusive use of the nonresident hunter. This is what we are talking about private land, but the public should be allowed the use of their public lands. Besides, the subsidized elite drain our rivers, kill the "fish and game" business; and then want me to be sympathetic, give them the subsidy and give them exclusive use of public lands.

Just a few years our private land will all be sold to foreign farmers from out of state. These people are going to plow up our grasslands, then paid not to grow crops, then paid a subsidy on what they do grow...and then bank that money in Texas. Somehow the "real farmer-rancher", the guy who is really working to make money, doesn't get in on the windfall the Government hands out. He ends up selling and goes to work for the nonresident.

CONCLUSION

We have been involved in access issues for many years. We believe that if there is no access, people lose interest in hunting and fishing, which hurts a variety of Montana businesses. If there is no access, people do not buy recreational vehicles. They do not buy hunting licenses. They do not buy jackets, coats, rifles, boots or all of the other paraphernalia bought by hunters, fishermen, archers and others. The father can't take his son hunting or fishing since there is nowhere to go.

Most of the public is willing to compensate the trust as required. Tourism is the number two employer and third in bringing revenue into the state, and as agriculture and mining are steadily declining, recreation is rapidly increasing.



Under the current system, livestock grazing leases provide revenue for the State school system.

THE LEASE HOLDER'S POSITION

By Jim Moore

The Coalition for the Appropriate Management of State Lands has sued the Montana Board of Land Commissioners and the Montana Department of State Lands. In the documents filed with the Court, the Coalition sets forth many allegations, three of which are of most significance. Those three deal with: access to state trust lands; the fees that are charged to agricultural lease holders of the state trust lands; and a request that the Court order that the Department of State Lands prepare an Environmental Impact Statement.

The lands in question differ from such public lands as the forest reserves and the lands that are managed by the Bureau of Land Management. At the time of the creation of the State of Montana, the federal government transferred title to certain lands to the state. The state then was obligated to utilize the income from those lands for educational purposes. The State of Montana has elected to retain ownership of most of the state trust lands and has historically leased those lands, with the income being paid into the state educational trust fund. The

school trust lands are leased for agricultural purposes, mining, cabin sites, recreation and several other uses. Under the Enabling Act that created the State of Montana and our Montana Constitution, the state must manage the land in accordance with the trust, thereby receiving monetary compensation for the uses that it allows upon the lands.

There are about 5 million acres of state school trust lands scattered throughout the State of Montana. They are divided into some 10,000 individual tracts, varying in size from two acres for cabin sites, to thousands of acres. Most of the tracts are approximately 640 acres in size.

The state has historically managed these lands on a most cost effective basis. It has leased a large part of the land to agricultural operators and imposed an obligation upon those agricultural operators to protect and preserve the lands. This arrangement has eliminated the need for the state to employ hundreds of people to manage and supervise the thousands of individual tracts of state trust land. Among other stewardship activities, the lease holders are responsible for weed control, maintaining fences and providing water. The number of people required by the Department of State Lands to manage its 5 million acres, as compared to the number of people required by the Bureau of Land Management or the Forest Service to manage a like number of acres, is unbelievably small. The effect of this arrangement is to maximize the monetary return to the state educational trust fund.

The Coalition has asked the Courts to require that the Department and the Land Board change their management arrangement. The Coalition is seemingly asking the Court to allow the public to have unrestricted access to state trust lands. If such unrestricted access is granted, the whole concept upon which the state lands are managed must necessarily change. If the lease holders cannot determine the times and circumstances under which members of the public may enter upon the lands, then the lease holders' ability to manage their leased lands has disappeared. The obligation to protect and preserve the state trust lands would shift to the state and the state would be required to hire the necessary people to not only supervise the activities of the public on these trust lands, but also to be involved in the costly management of the lands. Not only would this impose an astronomical cost burden upon the Department of State Lands, but the free public access to the state trust lands would diminish their value for agricultural and grazing purposes. The net result would be a tremendous loss of revenue to the state educational trust fund.

IF THE LEASE HOLDERS CANNOT DETERMINE THE TIMES AND CIRCUMSTANCES UNDER WHICH MEMBERS OF THE PUBLIC MAY ENTER UPON THE LANDS, THEN THE LEASE HOLDERS' ABILITY TO MANAGE THEIR LEASED LANDS HAS DISAPPEARED.

The Coalition has also asked the Court to determine that the fees charged to agricultural and grazing lease holders are inadequate. They simply state that the fees are not comparable to the amounts paid by agricultural

users to lease other kinds of land. There is nothing to indicate they recognize the various kinds of leasing arrangements provided to the lessee by the owner of other kinds of lands. Under other leasing arrangements, the lessor provides water, maintains fences, controls weeds and allows for reduced fees when grass is scarce. If fees are increased on state lands, additional services must be provided by the state.

Finally, the Coalition has asked the Court to order the Department of State Lands to prepare an Environmental Impact Statement on these lands. The Complaint does not indicate what they expect the preparation of such an Environmental Impact Statement to accomplish. Ordinarily, Environmental Impact Statements are prepared for the purpose of analyzing the environmental impacts of new activities, not to review ongoing activities. The management system of our state school trust lands has been ongoing for nearly a century.

While it is almost a certainty that the public has been excluded from access to some of the state trust lands by the agricultural lease holders of those lands, there is no clear indication that the public has been excluded from any large portion of the school trust lands. It is important to remember that most of the hunting, fishing and other kinds of outdoor recreation that occur in Montana take place on private lands. Most farmers and ranchers have in the past allowed the public to hunt and fish on private land asking only that the members of the public observe the common courtesies. Those are the same farmers and ranchers who lease the state school trust lands and allow hunting and fishing on the trust lands that they lease.

An increasing number of farmers and ranchers have restricted hunting and fishing upon their property in the last few years. This is probably a reaction to the efforts of some organizations such as the Coalition to change the accustomed relationship between the recreating public and the owners of agricultural lands. The greater the attempt by small numbers of the public to force landowners to accommodate their wishes, the greater will be the resistance of those land owners to public use of their property.

The Coalition wants free and unrestricted access to state lands. The Enabling Act and the state Constitution prohibit the Land Board and the Department of State Lands from allowing free usage. The Legislature could appropriate money from the general fund to be paid to the Department of State Lands as compensation for public use of those lands for recreational purposes. That is a legislative decision and should not be mandated by the Courts. It is possible that the Department of State Lands could negotiate recreational leases on the individual parcels of state land. Should that happen, the person who secures the recreational lease will then of course have the ability to use that land for his own recreational purposes and exclude every other individual from such recreational use. Such a solution would only result in less access to state lands than there is under the present system.

The Department of State Lands and the State Land Board are following a policy that has been in existence for nearly 100 years. Because the system is cost effective, it has provided an optimum amount of money to the State School Trust Fund. Until most recent times, the

relationship that has existed between those of our citizens who wish to hunt and fish and those of our citizens who are the lease holders of agricultural land has resulted in some of the finest hunting, fishing and outdoor recreation in all of the world. Our efforts should be directed toward the maintenance of that amicable relationship that has been so beneficial to everyone. Lawsuits such as the one filed by the Coalition for the appropriate Management of State Lands will only cause the deterioration of that relationship.

This reflects the views of the Montana Stockgrowers Association and the Montana Farm Bureau Federation, but does not necessarily reflect the opinions of the Montana Department of State Lands and the Board of Land Commissioners. ■

WHITETAIL DEER
ANTELOPE AND ELK



BIRCH CREEK OUTFITTERS

BILL GALT

LICENSED MONTANA OUTFITTER AND GUIDE

BOX 618
WHITE SULPHUR SPRINGS
MONTANA 59645

PHONE
406 547-2107
406 547-3479



"A Full Service Inn"

- Restaurant
- Indoor Pool & Jacuzzi
- Lounge
- 126 Deluxe Rooms

(406) 538-8721 211 East Main St.
Lewistown, MT 59457 P.O. Box 939



**MONTANA BOWHUNTER
SUPPLY**

SOUTHWEST MONTANA'S
COMPLETE ARCHERY PRO SHOP

- Indoor Shooting Range
- We Service All Makes of Bows
- Instruction

1716 West Main
Bozeman, Montana 59715
(406) 586-7722

ARCHERY CENTER

**MIKE ELLIG
ART SWETYE**



THE POWDER HORN

- GUNS & AMMO
- RELOADING SUPPLIES
- FISHING EQUIPMENT
- LICENSES

Complete Sporting Goods

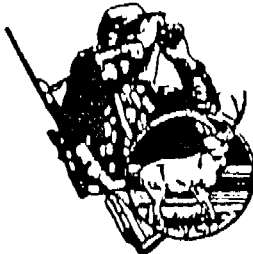
BOB BRADFORD GEORGE DIERUF
(406) 587-7373
35 East Main • P.O. Box 849 • Bozeman, MT 59715

MAC'S MARKET

"The Biggest Little Store by a "Dam Site"

**Complete Hunting &
Fishing Department**

Rods • Reels • Tackle • Combos • Archery • Lures
Flies • Bait • Ice • Film • Ammo • Topographical Maps
Fishing & Hunting Licenses • Scopes • Knives • Boots
Blaze Orange Vests • Camouflage Clothing • Winter Wear
Binoculars • Animal Alerts • Polypropylene Underwear



"It's Mac's for Snacks"

POP • CHIPS • BEER
WINE • COOKIES • CANDY

Groceries • Gas • Oil

MAC'S MARKET 293-6565 Highway 37 Libby, MT

RUSH'S LAKEVIEW

GUEST
RANCH

Full-service hunting & guiding activities in primitive and wilderness areas of MT & ID. *Family summer vacations*
Back country Skiers & Alpine Touring

**PROFESSIONAL GUIDE &
OUTFITTERS SCHOOL**

Ph. Winter 406-494-2585; Summer 406-276-3300
2905 Harrison Ave., Dept. WH. Butte, MT 59701

FULL-TIME OUTFITTERS

EXHIBIT 8
DATE 2-18-91
LB 778, 401

THE LAW FIRM
MOORE, O'CONNELL, REFLING & MANOS
A PROFESSIONAL CORPORATION

SUITE 10 LIFE OF MONTANA BUILDING
601 HAGGERTY LANE
REPLY TO
P. O. BOX 1288
BOZEMAN, MONTANA 59771-1288
TELEPHONE (406) 567-5511
FAX (406) 567-9079

PERRY J. MOORE
BARRY G. O'CONNELL
MARK D. REFLING
CHRISTOPHER L. MANOS
DOROTHY L. BROWNLOW
W. RUSSELL MCCLYEA
CINDY E. YOUNKIN

June 28, 1990

Marvin LeNoue
Bureau of Land Management
P.O. Box 36800
Billings, MT 59107

Re: Public Access Lawsuit
Our File No. 67018-005

Dear Mr. LeNoue:

The date of the trial of the State Lands Access Lawsuit has been continued from July 9, 1990, to April 22, 1991. The Order continuing the trial has just been received in our office.

More than a year ago, the Attorney General initiated an attempt to resolve the state lands access dispute through negotiation. The agricultural community, represented by the Montana Stockgrowers Association and the Montana Farm Bureau Federation, participated in the negotiation process in a positive way. Rather than simply stating that public access to accessible tracts of state land should not occur at all, they made known to the Department of State Lands and to the Attorney General those problems that would arise if unrestricted public access to the lands was granted. They made constructive suggestions for administrative regulations and legislative changes that would result in access that would preserve the trust lands, provide money from recreation for the educational trust fund and minimize the detrimental effects upon the agricultural lessees.

The agricultural community took the position that a lease that was impacted by public access would have less value than a lease that was not so impacted. A lessee would be impacted only if his leased land was accessible by a public road. They propose that there either be a differentiation in the lease fee between the impacted and the nonimpacted leases, or that there be an actual payment to the impacted lessee for his additional stewardship responsibilities. The Coalition that filed the lawsuit refused to accept this concept. It was at this point that the negotiations broke down.

Marvin LeNoue
June 28, 1990
Page 2

At the direction of the Land Board, the Department then held a series of hearings throughout the state to gather public input with regard to the need and desirability of public access to state trust lands. It is our understanding that the Department will now make recommendations for future action that will be submitted to the Land Board for consideration.

Based upon the presentations at the public hearing, the agricultural community believes the system that has been in place during previous years has been working. Most agricultural lessees allow the public onto state school trust lands for recreational purposes. The lessees do exert management control for purposes of protecting the resource. As far as we know, the Coalition has not identified any significant instances where recreational access has been unfairly denied.

During the preliminary court proceedings, the attention of the Judge came to focus upon the trust obligation of the state to receive monetary compensation for any disposition of a trust interest. The Judge intimated that the obligation of the Land Board is to seek out those who would lease recreational interests and to derive the fair market value of those interests. With that focus upon monetary return, it may not be possible for the Land Board to continue with its present policy. The agricultural community recognizes that possibility and has submitted to the Land Department a proposal where the present system would remain in place for those tracts of state trust land that do not have significant recreational value, but would allow private persons or entities, including the Department of Fish, Wildlife and Parks, to negotiate leases for tracts of state school trust land that have significant recreational value. Such an arrangement would certainly not satisfy the objectives of the Coalition that brought the lawsuit. It does, however, seem to address the requirements of the trust.

Thank you for your interest in this issue. If you have any questions or concerns, please feel free to contact me.

With warmest regards,

Jim Moore

Jim Moore

PJM/mh
67018-005.900619.L10



STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002
December 18, 1989

EXHIBIT 8
DATE 2-18-91
HB 4101-778

MIKE SULLIVAN
GOVERNOR

Thanks for your recent letter regarding the new rules for recreational use on State of Wyoming lands. You asked if problems have arisen as a result of these rules.

While the program is only a year old, I have heard it reported that the 1989 hunting season generated fewer access problems than any year in recent memory. Needless to say, I am pleased with this outcome and look forward to continued progress in the future.

With warm personal regards, I am

Very truly yours,


Mike Sullivan

MS/rmt

Public State land in North Dakota, South Dakota, Washington, Idaho, Oregon, Utah, Nevada, Arizona, New Mexico, California, and Wyoming are all open to the public. The Governor of Wyoming claims there are more problems than ever before

why not MONTANA

- over -

Opinion, comment

EXHIBIT 8

DATE 2-18-91

HB 778, 401

Land access

State land board action means courts will decide

The State Lands Board voted two weeks ago to delay a decision on giving the public access to millions of acres of public lands in Montana. The Republican majority on the board voted Sept. 24 for a full environmental impact study into the question of letting the public use public school lands that are leased by farmers and ranchers.

Only a month earlier, the board had voted for a 30-day environmental assessment of the matter, which would have allowed the board to make recommendations to the 1991 Legislature. Now, by voting for the full impact study, the board probably has delayed action on the access question for almost three years. This is because the Legislature must appropriate \$250,000 for the environmental impact study, and the money won't be available until July 1, after the Legislature adjourns. So, any legislative action regarding access to leased lands wouldn't come before the 1993 Legislature convened.

Also, it's possible that agricultural interests will try to block funding for the impact study in the 1991 Legislature, which would delay any resolution of the access issue indefinitely.

The board's latest vote seems to represent a flip-flop from its August position. There has been understandable speculation that agricultural interests successfully pressured the majority to have second thoughts.

What the land board may have done, in calling for a time-consuming study, is surrender any signifi-

cant influence of its own in the matter. A sportsmen's coalition has filed suit to open these public lands, and the courts could make any future action by the land board or the Legislature moot.

If that happens, Montana agriculture may find itself desperately wishing the board had beaten the courts to the punch. The last major access case to go before Montana courts led to a revolutionary stream access right for the public. Some observers feel the courts will decide the school lands access question the same way.

Secretary of State Mike Cooney, a Democratic member of the land board, says the impact study should be carried out. However, Cooney also says it is ridiculous for the board to take the position that there can be no access until the study is finished and the Legislature gets the issue. The board could grant at least some public access now, Cooney says.

Cooney is right. The sportsmen and recreationists who want access the most have been reasonable about the issue. Lands Commissioner Dennis Casey wrote a reasonable report on the matter last summer. The board itself seemed reasonable, until two weeks ago.

Our feeling is that the board should start being reasonable again, while it still can. We don't think the courts will leave it any excuses for allowing the public to be locked out of these lands any longer.

Sportsmen say state 'reneged'

latter is headed
back to court

Eric Williams
Hard Staff Writer

The state has reneged on an assurance that public access would be granted to state lands this fall or next, the leader of a sportsmen's coalition said Monday, and therefore the matter is headed back to court.

Jack Atcheson Sr. of Butte, who heads the Coalition for the Appropriate Management of State Lands, and attorney Jim Goetz of Helena have decided to go ahead and file an April 1991 court date.

The State Land Board voted 3-2 Monday to conduct a lengthy Environmental Impact Statement on the access issue and send the findings to the 1993 Legislature to iron out the matter.

her side pleased

"We've told them it's totally unacceptable," said Tony Schoonen Ramsay, also of the coalition.

"It's a political stall."

Meanwhile, the leading group on the other side of the access issue is pleased with the Land Board's decision.

Kim Enkerud, natural resources coordinator for the Montana Stock-growers' Association said "We're very favorable" to having the two-year impact study conducted.

Last month, board member and Secretary of State Mike Cooney suggested an impact statement be done, but the board opted for a less-extensive Environmental Assessment.

'Big disappointment'

But state lands officials, including Commissioner Dennis Casey, said Monday a full-blown Environmental Impact Statement is needed to assess all aspects of granting public access.

Cooney's proposal would take only several months, and the coalition supported that move because it believed the situation could be ironed out before the 1991 Legislature.

Schoonen said "this 360-degree turnaround" by the Republican ma-

jority of the Land Board was difficult to understand.

"The whole thing was just a real big disappointment," he said, but added he was pleased with efforts by Cooney and Superintendent of Public Instruction Nancy Keenan to resolve the matter more quickly.

The coalition filed suit in February 1988, and negotiations were off and on for more than a year. This summer, the Department of State Lands held several public hearings around the state to help determine what decisions should be made and how they should be implemented.

Atcheson said Monday the coalition had agreed to hold off on its lawsuit, for which a court date had been set for this past July. Atcheson said that decision was made with assurances that some sort of access arrangement to state-owned lease lands would be made by this fall or next. Now, the Land Board has pushed any administrative/legislative decision back to mid-1993.

'Breach of faith'

"We think they lied to us," Atcheson said of the state. "This is a breach of faith by the government."

And, Atcheson said, all previously negotiated terms are called off, as far as the coalition is concerned.

"We will proceed with all the rigors of the original suit," he said, including a requirement that "fair market value" be returned by the state school trust lands.

A Department of State Lands' fact sheet said the 4.1 million acres leased for grazing yield the state school foundation about \$1 an acre, which the coalition contends is far from fair market value. There is another 1.1 million acres leased for other uses.

A district judge earlier said the state school trust fund is not getting fair market value out of the land. Schoonen said taxpayers and recreationists have to make that up, through higher mill levies and \$1 million annually paid to operate the department.

Grazing Impact

Ironically, the coalition also had agreed in negotiations to drop a request that an impact statement be done on the grazing of state lands.

Now, Atcheson said, the coalition

will request that the impact statement, aimed at assessing the impacts of allowing access on state-owned tracks, also evaluate the effects the grazing on the land has as well.

Enkerud said she has no qualms about the impact statement including how grazing effects the land.

"We expect it would take care of all uses and concerns," she said, including additional weed control needed because of more traffic and how to handle the firing of guns near homes, as well as general recreation.

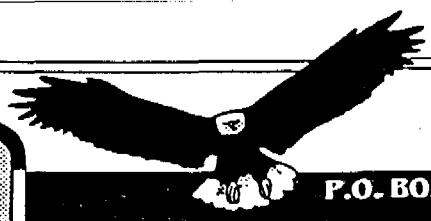
Grazing "is just one of the uses of state lands," she said.

Until contacted by "The Standard," Enkerud said she was aware what approach the coalition would take, and she said she was disappointed to hear it would reject the lawsuit.

"We're sorry to hear they're going to take that route," she said. "The (impact statement) would rather face the facts (and issues) than going to court."

She also said the impact statement would be better than an assessment because it means people "would be on the ground" gathering information. "You can't do it from a desk in Helena."

Atcheson said Montana is only state or federal holder of public lands which does not require allowance of some sort of access.



**PUBLIC LAND
ACCESS
ASSOCIATION
INC.**

**P.O. BOX 3902 • Bozeman, Montana • 59722-3902
(406) 587-2736 or 586-7810**

18 February 1991

PRESIDENT

Ronald B. Stevens
Colonel, USA, Ret.
Bozeman, MT

VICE PRESIDENT

Doug E. Daniels, P.E.
Beigrade, MT

EXECUTIVE DIRECTOR

Lewis E. Hawkes
Professional Wild Lands Mgr.
Bozeman, MT

SECRETARY/TREASURER

Stephanie Smith
Bozeman, MT

DIRECTORS

Perry Nelson
Fish & Wildlife Mgr., Ret.
Bozeman, MT

Paul F. Berg
Biologist, Ret.
Billings, MT

Jerry Jackson
Real Estate Broker
Billings, MT

Craig Staley
Sheridan, MT

Arthur W. Van't Hul, P.E.
Professional Engineer &
Real Estate Broker
Bozeman, MT

Vergil L. Lindsey
Forester, Ret. District Ranger
Ennis, MT

Robert E. Olson
Ret. NP - BN Switchman
Livingston, MT

Representative Bob Raney, Chairman
House Natural Resource Committee

I am Ron Stevens, President of the Public Land Access Association, Inc. (PLAAI) representing approximately 835 individual and 6,000 affiliate members, all public land users.

Approximately 2½ years ago then Governor Schwinden said access was the most important issue facing the Montana recreationist. Shortly thereafter Jim Flynn, then Director of the Montana Dept of Fish, Wildlife and Parks, when asked to identify the most important problem facing his department stated, "In a word, access." On 5 December last year K. L. Cool, current Department Director announced, "The number one Sportsman issue in Montana is access. It overrides everything else."

On 10 December 1990 I accepted Governor Stephen's invitation to attend a three day conference in Billings. The governor's invitation read, "It is my pleasure to invite you to what I feel is one of the most important conferences of the year-- the Governor's Conference on Rangelands." The conference theme was Building Partnerships for the 90s. Sixty one speakers emphasized the importance of working together to solve rangeland management problems. At an appropriate time during the last day of the conference I noted the attendees prevailing fear of the "Cattle Free By '93" and "No More Moo By '92" movement. I stated that we public land users also believe the animal rights and anti-hunting groups will soon introduce another catchy slogan like "No More Boomin in the Bloomin." I said then, and I repeat it now, if the Governor and the rangeland community are serious about building partnerships for the 90s, what better group to woo than the 53% of Montana's population which annually purchases conservation licenses and has a stake in the husbandry of rangelands?

HB 778 offers a marvelous opportunity to establish the first, and most important, partnership for the 90s, a partnership between landowners and sportsmen of this great state, a partnership Governor Stephens challenged Director Cool to make his number one priority upon his appointment. Conversely, HB 401 just prolongs the debate and inserts another wedge in the relationship. PLAAI opposes HB 401 and strongly supports HB 778.

Respectfully submitted.

Ronald B. Stevens
President

you or I

The record discloses numerous instances of denial of public recreational use of state public lands (see, e.g., Plaintiff's answer to DSL's Interrogatory No. 9). It is the position of Plaintiff that judicial action is necessary to compel the State Defendants to administer the public lands of the State of Montana according to the requirements of the Montana Constitution and of the Multiple Use Act, MCA § 77-1-203. As demonstrated below, the DSL and the Board have long stifled public efforts to get those departments to manage the state public lands on a multiple use basis and to allow public recreational use. For years, the agencies have promised one thing (that they were developing a meaningful recreational inventory and working on a program to accomplish public access) and done another. They have bureaucratically stifled any progress on public access.

More recently the DSL has attempted to excuse its failures to follow multiple use dictates on the theory that it has an obligation under the Enabling Act to optimize economic return to the trust. As demonstrated below, this is a political justification not supported by the evidence.

II. THERE IS A LONG HISTORY OF BROKEN PROMISES BY THE STATE OF MONTANA REGARDING MULTIPLE USE OF AND PUBLIC ACCESS ON STATE PUBLIC LANDS.

A. History, 1968-1972, Enactment of the Multiple-Use Statute and Revision of the Constitutional Provision Regarding Public Lands.

The issue of multiple use of and public access on state public lands for recreational purposes has been with us a long

time. In a speech delivered by then-Commissioner of State Lands Dennis Hemmer in the spring of 1986, he said: "While the issue of hunting and fishing access to school trust lands has become a very hot issue recently, it is not a new issue. The issue has been discussed and studied since the 1960's." Hemmer Depo. Exh.

31.

Mon
Tiger
Blue
Bent

As early as 1967, the Fortieth Montana Legislature passed Senate Joint Resolution No. 19 which requested "that the Governor appoint a committee to study the diversified uses of state lands and to recommend such plans and programs as the committee deems necessary to provide for the overall use of state lands for both public recreation and agricultural pursuit to the greatest benefit for the public in general." See Senate Joint Resolution No. 19, Fortieth Legislature, attached to this brief as "Attachment A". Among other points stated in the Joint Resolution was the following:

WHEREAS, the multiple use concept of management of state lands is generally accepted as a just method for obtaining maximum diversified use for the overall public benefit; and

WHEREAS, recreational use of state lands is generally compatible and not necessarily restrictive, with other uses of state lands, including production of oil, gas and minerals, grazing of livestock, and other agricultural pursuits, logging operations, and others....

Pursuant to that Joint Resolution, a committee was appointed to study the issue and submit plans and programs with suitable recommendations and a draft of proposed legislation to carry out such objectives. The submission was to be to the Forty-First Montana Legislative Assembly. That resulted in 1968 in The

Report of the Committee Established to Study the Diversified
Uses of State Lands, Depo. Exh. 107.³ The report stated:

Senate Joint Resolution No. 19 appears to be heralding a new era. It recognizes that the Multiple-use concept of land management is generally accepted as a just method for obtaining maximum diversified use for the overall public benefit. The resolution notes that certain uses, such as recreation, are compatible and not unreasonably restrictive with other uses such as grazing of livestock, logging operations, and the production of gas, oil and minerals. The resolution calls for a study of the potential and diversified uses of state land to meet the future needs of the people of Montana not only for public recreation but to permit the expected and desired growth of the agricultural and livestock industry of the state.

Id. at 9-10.

The committee, including then-Commissioner of State Lands, Mons Tiegen, made an important endorsement for multiple use management of state public lands:

The committee subscribes to the multiple use concept of management. It recognizes that a single use of certain tracts in relation to a larger land base and many diverse uses is reasonable and prudent. Grazing, agriculture or recreation may be the highest and most important use of a single parcel of land, yet it does not necessarily rule out other uses.

Id. at 12. The committee recognized that the approach of the 1889 Montana Constitution to the management of public lands (requiring a rigid classification of the lands into one of four categories--grazing, agriculture, timber and city lots) "reflect[s] an earlier, exploitive attitude toward land

³ The deposition exhibits are numbered separately. Accompanying this brief is a notebook with all deposition and trial exhibits referred to herein. Also, Plaintiff is lodging all depositions cited herein together with a motion for leave to file them.

management" and is "far too restrictive for modern scientific conservation management." Id. The consensus of the committee was that the Constitution should be amended to provide the Board of Land Commissioners the authority to classify lands in accord with sound land management principles.

Strikingly, the committee came up with a definition of the "multiple-use concept" which is identical to the definition subsequently adopted by the Montana Legislature in 1969 (Session Laws of the Forty-First Legislative Assembly, 1969, attached as "Attachment B"), now codified as M.C.A. § 77-1-203(1). That definition, found on p. 17 of the report, is as follows:

The management of all the various resources of the State-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust; making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and a harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

See Chapter 113, Session Laws Forty-First Legislative Assembly, amending Section 81-103 R.C.M. (1947), approved February 24, 1969.

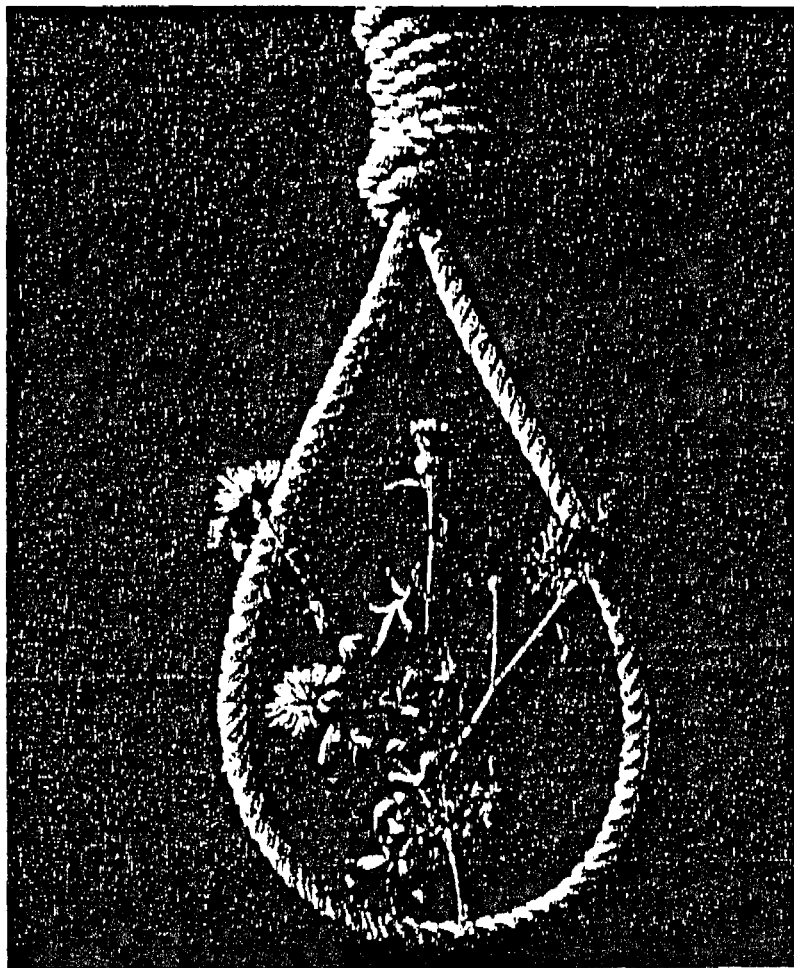
Several years later the Montana Legislature followed up on the recommendation of the "diversified uses" committee regarding a constitutional amendment. The Forty-Second Legislative Assembly passed House Joint Resolution No. 32 on March 1, 1971, "urging the Constitutional Convention to amend Section 1 and

EXHIBIT 11

DATE 2-18-91

HB 401-778

CONTROLLING
KNAPWEED
ON MONTANA RANGELAND



Cooperative Extension Service
Montana State University-Bozeman

Revised 1976
G. H. R. 1976

If the rest period is followed with another period of grazing in the fall, livestock has an opportunity to utilize the basal leaves of rosettes at least twice during the year. This may reduce the competitive ability of the knapweed plants. While partial control may be possible in small, intensively managed pastures, there is no evidence that control of knapweed by sheep or any other livestock is feasible on extensively-managed rangelands.

Strategies to Slow Knapweed Spread

The spread of spotted knapweed by people must be addressed in any knapweed control project. Elimination of public access through infested areas would reduce the rate of spread.

Knapweed also has been introduced to new areas by the movement of contaminated grain seed and hay. These problems were magnified by the large shipment of hay from western to eastern Montana during the 1984 and 1985 drought. The subdivision of rural areas is another serious problem. Subdivision activity disturbs soil, creating an ideal seedbed conducive to weed invasion. The problem is compounded by owners of small tracts who do not recognize the need for weed control.

Good grazing management often is the first defense to the rapid spread of spotted knapweed on rangeland. While knapweed can invade excellent condition range, its rate of spread is slower than it appears to be on poor condition range. Although it is not known how much of the recent spread of knapweed can be attributed to poor condition range, the invasion is accelerated by any soil disturbance (Morris and Bedunah, 1984).

Grazing systems, or alternating periods of grazing use in a pasture with periods of rest to allow desirable plants to regain vigor, are an important tool for keeping rangeland in good and excellent condition. The rest rotation system, which allows one pasture to be rested from livestock use for a full year, has proved highly useful on Montana ranges. However, several Montana ranchers have observed that rest rotation is not effective on knapweed-infested range. They report that year-long rest allows knapweed seed production, and seed planting then is aided by hoof action the following year. This may indicate the need of a rotation system that allows repeated periods of grazing and non-grazing during each growing season on knapweed-infested range. A herbicide program should be implemented in conjunction with a grazing system, because competition by native forage species alone will not lower knapweed density.

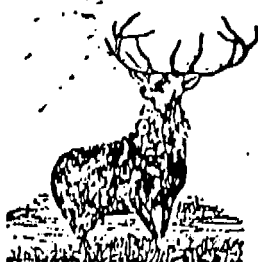
Summary

Successful control of knapweed in Montana requires cooperation between private landowners, public land users and governmental agencies. To minimize the future spread of knapweed, each of us must do our part:

- Avoid driving motorized vehicles across knapweed infested areas.
- Do not purchase or transport hay or grain contaminated with knapweed.
- Minimize soil disturbance on range and other non-crop land.
- Use herbicides to eliminate small patches of knapweed.

Very little knapweed on Mt. Helena
Rest-rotation grazing
E. G. M. H. A. 66/10

EXHIBIT 12
DATE 2-18-91
HB 401-778



SKYLINE SPORTSMEN'S ASSOCIATION, INC.

P. O. BOX 173

BUTTE, MONTANA 59701

NO REPLY

1st Request

OR

2ND Request

January 18, 1991

Director, Montana Dept. of Agriculture
Agriculture/Livestock Building
Capitol Station
Helena, MT 59620

Dear Sir:

We are writing to obtain information on weeds in Montana; more specifically knapweed. Could you provide us with a map or maps that show the spread of knapweed throughout Montana for the past several years?

→ Specifically, could you provide us with a map and data on the knapweed situation State land (school trust)? As you know, recreational use of State lands has been limited. If knapweed is on the 5.2 million acres, where did it come from?

Also, we would like to know the following:

- 1.. Date and location of winter feeding (hay) on State land. Is the hay certified as knapweed free? Do you require certification of hay fed on State land?
2. Who pays for knapweed control and how much and where? Is general fund dollars used for knapweed control on State land?
3. How is the knapweed problem addressed on new timber sales, road building, etc., on State land? Who pays for knapweed control on timber sales? Also mining activity.
4. How is the knapweed problem addressed on plowed State land? Plowed prairie has the potential to develop knapweed stands, due to excessive surface disturbance. How much knapweed resulted from the 'sodbusting' period on State land? Do you have a record of increases in knapweed on overgrazed school trust land?

Much is being said these days about the recreation sites spreading knapweed. Since recreational use of State land has been extremely limited, what is the source of knapweed on State land? Is State land free of knapweed then?

Thanks for your response.

Sincerely,

William Patrick
President,
Skyline Sportsmen's Assn.

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME BOB BUGNI BUDGET BILL # 778ADDRESS 2545 PRICKLY PEAR AVEWHOM DO YOU REPRESENT? PRICKLY PEAR SPORTSMAN ASS - ARIZONASUPPORT X 778 OPPOSE * 401 AMEND COMMENTS: THE POINT WE WOULD LIKE TO MAKE

TO THIS COMMITTEE NOT COVERED BY OTHER
PROPERLY CONCERN AUDIT REPORT BY
LEGISLATIVE AUDITOR

IT IS IMPORTANT THAT THE PUBLIC &
MEMBERS OF THE LEGISLATURE RECOGNIZE THAT
THE GENERAL FUND IS SUPPORTING BUDGET OF
STATE LANDS DEPT TO THE TUNE OF
\$3 MILLION ^{PER YEAR} WHICH IS ABOUT 50% OF
DEPT'S BUDGET. 100% OF DEPT'S BUDGET
FOR LAND ADMINISTRATION IS PAID BY
TAXPAYERS OF MONTANA THROUGH THE
GENERAL FUND

ISN'T IT IRONIC THAT RECREATIONAL
ACCESS ^{TO GENERAL PUBLIC} HAS BEEN DELAYED SINCE
THE 1960'S BUT ^{THE} GENERAL PUBLIC
HAS BEEN PAYING THE TAB ALL ALONG.

THE 1972 CONSTITUTION SET FORTH PROCESS
TO ALLOW MORE RECREATIONAL USE OF STATE LANDS
HR:1991
CS16 BUT DEPT HAS NOT COMPLIED WITH
INTENT OF LAW.

OUR SUIT AGAINST DEPT + 1983
LEGISLATIVE PERFORMANCE AUDIT BOTH QUESTION
WHETHER LESSEES ARE PAYING THEIR FAIR
SHARE WITHIN LEASING TRUST LAND. SPORTSMAN
HAVE BEEN WILLING TO COMPENSATE
THE SCHOOL TRUST FOR RECREATION ACCESS
EVEN THOUGH OTHER STATES THAT HAVE SCHOOL
TRUST LANDS DON'T CHARGE FOR RECREATIONAL
USE.

THE LAND BOARD HAS REJECTED
^{SPORTSMAN} OUR OFFER TO COMPENSATE THE TRUST
WHILE IGNORING POTENTIAL INCOME
TO THE TRUST FROM INCREASING LEASE
CHARGES TO OTHER USERS OF STATE
LAND. THIS IS NOT FAIR.

WITH MORE + MORE LAND IN
MONTANA BEING LOAN TO THE PUBLIC
AT SAME TIME LOCAL DEMAND FOR
~~RECREATION BEING PUT ON RESOURCES~~
FOR RECREATION OPPORTUNITIES BEING MADE,
THE PUBLIC IS DEMANDING ACCESS
TO STATE LAND.

COPY OF LEGISLATIVE AUDIT REPORT



Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

LEGISLATIVE AUDITOR:
SCOTT A. SEACAT

LEGAL COUNSEL:
JOHN W. NORTHEY

DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON
Operations and EDP Audit

JAMES GILLET
Financial-Compliance Audit

JIM PELLEGRINI
Performance Audit

January 16, 1991

Representative Robert Pavlovich
Capitol Station
Helena, MT 59620

Dear Representative Pavlovich:

Enclosed is a memorandum discussing the issues you raised related to the Department of State Lands. Also enclosed is a copy of our latest financial-compliance audit of the department and our 1983 performance audit of "State-Owned and Leased Land." Most of the issues in your request have been previously examined and debated.

We found the various trust funds are showing a stable gain in both income and fund balance. The combined trusts are currently earning over \$50 million a year with the largest beneficiary being common schools.

The questions related to the potential of increasing trust income are hard to answer. Currently leases on trust lands are raising about 26 percent of trust income. By far, investment earning is the largest contributor to trust income.

Currently the General Fund supports about 50 percent of the Department of State Land's budget. We have made some recommendations in our reports that could reduce the use of the General Fund. The Governor has also proposed changing some of the department's funding source to reduce the use of the General Fund. The Legislative Fiscal Analyst questions whether the change will really reduce overall General Fund expenditures.

Recreation access may be the most controversial issue covered. It appears this issue is on hold, at least until the Environmental Impact Statement (EIS) requested by the Board of Land Commissioners is completed.

fund. Appendix A shows the various sources of income from each of the trusts for FY 1989-90.

Use of General Fund Moneys for DSL Operations

Questions were raised about the use of General Fund moneys to support the Department of State Lands. Currently the department funds its Land Administration program entirely from the General Fund. The General Fund is also used for significant parts of the Central Management and Forestry programs. The following chart shows the percent of General Fund used by each DSL program for FY 1987-88 and FY 1988-89.

Department of State Lands Expenditures by Program and Fund Fiscal Years 1987-88 and 1988-89

Fiscal Year 1987-88

Program	General Fund Expenditures	All Other Fund Expenditures	Total Expenditures	Percent General Fund
*****	*****	*****	*****	*****
Central Management	\$1,058,184	\$ 413,266	\$ 1,471,450	71.9% X
Reclamation	82,797	6,018,566	6,101,363	1.4%
Land Administration	544,506	0	544,506	100.0% X
Resource Development	0	234,594	234,594	0.0%
Forestry	6,470,984	2,836,274	9,307,258	69.5% K
Total	<u>\$8,156,471</u>	<u>\$9,502,700</u>	<u>\$17,659,171</u>	46.2%

Fiscal Year 1988-89

Central Management	\$ 1,061,811	\$ 346,677	\$ 1,408,488	75.4% *
Reclamation	83,975	6,958,828	7,042,803	1.2%
Land Administration	556,443	0	556,443	100.0% X
Resource Development	0	263,319	263,319	0.0%
Forestry	16,132,137	2,760,696	18,892,833	85.4% K
Total	<u>\$17,834,366</u>	<u>\$10,329,520</u>	<u>\$28,163,886</u>	63.3%

Source: OLA F/C Audit of the Department of State Lands FYE June 30, 1989

Our F/C audit of DSL for fiscal years 1987-88 and 1988-89 noted the department could have reduced its General Fund expenditures and used funds available in the Special Revenue Fund for both the Central Management and Forestry programs. The law requires the department to apply expenditures against non-General Fund money wherever possible before using the General Fund Appropriation. The potential General Fund savings amounted to approximately \$250,000.

The department's expenditures for the Forestry program were significantly higher in FY 1988-89 due to higher fire suppression costs. Because of the unpredictable nature of fires, it is difficult to budget fire suppression costs. Often the department must request approval for supplemental appropriations. During the 1989 session the department was granted a supplemental appropriation of approximately \$12.6 million in General Fund money. The current executive budget requests a supplemental appropriation of approximately \$2.5 million for the 1991 biennium for fire suppression costs. In our F/C audit we recommended the department work with the Office of Budget and Program Planning to find a funding source to build a reserve fund for payment of future fire suppression costs. Eventually the department could build a large enough reserve fund to replace the General Fund as the source of fire suppression funding.

Proposed Funding Changes

The executive budget for the 1993 biennium proposes replacing General Fund money with trust fund interest for department functions related to the management of trust lands (\$3.39 million in each year of the biennium). The budget states it is customary for governmental and private trusts to finance management of these trusts with a portion of the earnings generated. Ten other western states use trust revenues to finance trust management activities. The money would be raised by diverting up to 10 percent of trust lands income that is not designated for placement in the permanent funds.

The 1993 biennium LFA budget analysis states the Governor's proposal raises constitutional issues since the full 95 percent of interest and income from the common school trust would not be deposited in the school equalization account (SEA). The LFA discusses how this will not really save General Fund moneys even though the department will not be spending the money because more General Fund will be needed to fund the SEA. This use of trust lands income will also affect the other agencies that receive trust income.

Are Lease Rates Too Low?

Questions were raised about whether farmers and ranchers are paying their fair share when leasing trust lands. Are trust lands to support public schools or to subsidize agriculture? The question of fair lease rates for trust lands has been debated for years. In our 1983 performance audit, we found grazing rates were not maximizing income to the trust fund because the department charges below fair market value for its leases. The Board of Land Commissioners is required to "administer this trust to secure the largest measure of legitimate and reasonable advantage to the state." The department sets a minimum lease rate based on a formula tied to the price of beef. The department only charges the minimum rate unless the lease has been let through competitive bid. We recommended the department raise the grazing rate to a level that provides the "largest ... reasonable advantage to the state."

Our report also noted one way to help maximize the trust fund would be to seek competitive bids on state leases. At the time of our audit the department did not seek competitive bids. We found only 5 percent of grazing leases and

2 percent of agricultural leases were competitively bid. Department officials stated the lack of competitive bidding is largely due to two factors: the statutory provision allowing the current lessee to meet the high bid, and people do not want to create problems with their neighbors by bidding on their lease. We recommended the department advertise the leases that are coming up for renewal each year to encourage competitive bidding.

Management of Trust Lands

The lease rate issue is only part of the larger issue of the department's overall management approach to trust lands. In our report we had several other recommendations related to increasing income from trust lands and improving management of the lands. For example, we found the department managed many parcels which were less than 40 acres each. Many of state's small isolated parcels were unproductive, yet the department had not specifically evaluated what to do with these lands. Statutes allow the Board of Land Commissioners to exchange land in order to consolidate state lands and to sell land when it is in the best interest of the state. We recommended the department establish a program to remove unproductive small parcels from the inventory and consolidate lands into more manageable tracts.

We also recommended the department develop a plan to provide for active management of the state's trust lands. Implementation of such a plan could require legislative direction and changes in funding and staffing patterns. The Governor's budget states that public demand for a multitude of uses and the proper management of trust lands has increased in recent years. Increased management can be expected to produce greater long-term revenues to the trusts. These new uses and management efforts have created needs for updating procedures, changing lease stipulations, and conducting field reviews and investigations. To address these trust management needs the Governor proposes to add 3 FTE land use specialists, 2 FTE land use technicians, and 1.75 FTE clerical positions

Leasing of Recreation Access

The request mentioned that one way to increase trust lands income would be to have leases for recreation access. Again this has been a controversial issue for many years. In August 1990 the Board of Land Commissioners considered a report prepared by the department on the issue. The report listed several options to handle recreation access including recreation leases. The Board determined that an Environmental Impact Statement would be necessary before decisions are made on public access to trust lands. The EIS will assess social, economic, and environmental impacts of providing the public with recreational access to trust lands. The Governor's budget includes \$300,000 in General Fund biennial appropriation for the study.

The issue of recreation access is part of the larger issue of multiple-use management of trust lands. Section 77-1-203, MCA, requires the department to manage state lands under the multiple-use management concept. Multiple-use management of state land involves using all of the various resources of the lands in the combination that best meets the needs of the people and the beneficiaries

of the trust. If a parcel with one classification, for example grazing, has other multiple uses or resource values, then it should be managed to maintain or enhance these multiple-use values. Other multiple uses include recreation use, wildlife use, and public use.

At the time of our performance audit the department did not have a plan for the multiple use of state land. Individual parcels were generally not used for multiple purposes other than the leasing of surface and mineral rights. Partly in response to the enactment of the multiple-use statute, the department conducted an inventory of state trust land to determine the recreational potential of the land. From this study some fishing access sites were leased by the Department of Fish, Wildlife and Parks. We recommended the department develop plans and policies for the multiple-use of trust land.

Conclusion

The various trust funds are showing a stable gain in both income and fund balance. The combined trusts are currently raising over \$50 million a year with the largest beneficiary being common schools. Should lease rates be increased to provide more money to the trusts? Would improved management practices increase trust income? These are hard questions to answer. Appendix A shows that for FY 1989-90 leases on trust lands raised about 26 percent of trust income. By far, investment earnings are the largest contributor to trust income. The Governor has proposed increasing staffing levels for land management efforts.

Currently the General Fund supports about 50 percent of the department's budget. This can vary considerably depending on the amount of money needed for fire suppression costs. OLA has made some recommendations that could reduce the use of the General Fund. The Governor has also proposed changing the department's funding source for land management functions.

Recreation access may be the most controversial issue covered. It appears this issue is on hold, at least until the EIS requested by the Board of Land Commissions is completed.

v/v9.mem

WITNESS STATEMENT

NAME Gary L. Sturm BILL NO. 778
ADDRESS 146 Briarwood DATE 2-18-91
WHOM DO YOU REPRESENT? Prickly Pear Sportmen
SUPPORT HB 78 OPPOSE HB 401 AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: While I personally could support the existing State land access policy of either everybody gets access or nobody, including the leaseholder, gets access for recreational purposes, it is obvious that this policy is being blatantly violated by many leaseholders. The fair, equitable solution is to open all State lands to recreational access. In reference to compensation for this access, I personally find it strange that a Department that realizes less than a 4% return on the value of the land they manage, can make the argument that Montana citizens should pay to access their lands. State land is our land. Let us use it.

DATE 2-18-91

HB 401-758

Last August, representatives of hunting and fishing groups came before the Land Board to suggest a program in which people could pay

follow and disregard the requirements of the Montana Constitution and the Montana Environmental Policy Act," Goetz wrote.

Enlle Jhu - Page 02-26-88

Analyst says low lease rates cost schools millions

By Dan Carter
Standard Staff Writer

Montana's public schools are being shorted between \$3.5 million and \$5.2 million because the Department of State Lands does not achieve fair market value on its grazing leases, according to a recent report from the Legislative Fiscal Analyst.

"The Board of Land Commissioners has not implemented a policy of assessing a fair market value from each parcel of grazing land as required by the (state) constitution," according to the report written by Senior Fiscal Analyst Carl Schweitzer. "The constitution requires the board to achieve a fair market value on each grazing lease it negotiates."

The report, released to the Legislative Finance Committee in mid-January, was done to determine the net income earned from state trust land and examine alternatives to increase it.

The department's policy on leasing state grazing land is also a main issue in a lawsuit filed Thursday against the Board of Land Commissioners and department by the Montana Coalition for Access on Public State Lands.

The report noted that the state could be charging twice what it is now for grazing leases and still be within the fair market rates determined for private and federal land.

Schweitzer wrote in his report that there are three indicators to suggest that.

First, he said, the Department of Agriculture said in 1987 that average rental rate for privately leased grazing land in Montana was \$7.94 per animal-unit-month (AUM), which is the amount of natural feed available for one cow, horse or five

sheep one month.

Secondly, he said, the Bureau of Indian Affairs has reported that the current fair market price for Indian land is between \$6 and \$7 per AUM.

And third, Schweitzer wrote, a 1984 appraisal of Forest Service and Bureau of Land Management Land indicated that the market value of federal grazing land in Montana to be \$7.60 per AUM.

In fiscal 1988, the state's minimum rental rate was \$3.27 per AUM. It is estimated that over 90 percent of the state's grazing land lessees pay no more than the minimum rate.

"If the fair market value of state grazing lands was raised to within the range of \$6 to \$7.60 per AUM, the income to trust recipients would be increased between \$3.7 million and \$5.6 million per year," the analyst's report said.

Because about 93.5 percent of grazing income funds the state equalization payment, he said, raising the rental rates would increase school funding between \$3.5 million and \$5.2 million a year.

Attorney General Mike Greely issued an opinion in 1983 that recommended raising rates to fair market value, Schweitzer said, but "the Board of Land Commissioners has not changed."

The report also notes that the state could earn up to \$56 million more a year if it sold its 5.1 million acres of state-owned land and invested the proceeds.

That, however, would require amendments to state law, the report said, which prohibits the sale of timber lands, lands with oil, gas, coal or valuable minerals and land adjacent to lakes and navigable streams.

EXHIBIT 17
DATE 2-18-91
HB 778,401

February 8, 1991

To: Nancy Keenan
From: Madalyn Quinlan
Subject: Land Board Giveaways

I have gone back through the agendas, minutes, notes, etc. for the State Land Board meetings since January 1989. Since the beginning of your term on the land board, there have been three significant "giveaways" to the mineral industry.

Westmoreland Coal Lease

The Land Board renewed Westmoreland Coal Company's coal lease for ten years at a rate lower than the federal royalty rate. The giveaway resulted in a \$1 million revenue loss to the common school trust. Westmoreland is estimated to produce 4 million tons of coal from the renewed state lease.

Conoco Settlement with the State of Montana

The land board settled for a \$20,000 payment from Conoco in a lawsuit where the state's geologist had estimated that the common school trust should receive \$188,000 over ten years.

Bull Mountain Coal Exchange

The Land Board supported a proposal by the Meridian Minerals to exchange rather than lease federal land in the Bull Mountains for a coal mine. The revenue loss to the public schools of Montana under the land exchange is estimated to be as high as \$780,000 annually over the 30 life of the mine. The state of Montana would need to receive \$5.7 million today in order to make up for the royalty revenue that we will forego in the next 30 years.

and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.

History: En. Sec. 1, Ch. 133, L. 1981; and. Sec. 1, Ch. 621, L. 1983; (5)En. Sec. 2, Ch. 621, L. 1983.

Compiler's Comments

1983 Amendment: In (1), near beginning changed "highways of this state" to "ways of this state", and decreased number of trees that may be transported from 10 to 5; and inserted

(3); (5) was enacted as a separate section but codified as part of this section.

Cross-References

Place of imprisonment when not specified by law, 46-18-211.

CHAPTER 14

RANGELAND RESOURCES

Part 1 — Rangeland Management

Section

- 76-14-101. Short title.
- 76-14-102. Purpose.
- 76-14-103. Definitions.
- 76-14-104. Types of land included as rangeland.
- 76-14-105. Role of state coordinator.
- 76-14-106. Duties of rangeland resources committee.
- 76-14-107 through 76-14-110 reserved.
- 76-14-111. Rangeland improvement loan program.
- 76-14-112. Rangeland improvement loan special revenue account.
- 76-14-113. Eligibility for loans.
- 76-14-114. Criteria for evaluation of loan applications.
- 76-14-115. Selection of loan recipients.
- 76-14-116. Rules.

see 76-14-114
#2
ALSO PAGE 817
see 909

Part 1

Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. ~~Purpose~~ The purpose of this part is to establish a program of rangeland management whereby:

- (1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;
- (2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and
- (3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(7) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(8) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8) En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7) En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (5), (6), and (10).

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).

76-14-106. Duties of rangeland resources committee. (1) The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2).

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stockwater development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

76-14-112. Rangeland improvement loan special revenue account.

(1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account 15% of the total amount of renewable resource development grants and loans as provided by 90-2-113, any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program, and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "special revenue account" for "earmarked account" and

substituted "state special revenue fund" for "earmarked revenue fund".

76-14-113. Eligibility for loans. (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States soil conservation service.

History: En. Sec. 4, Ch. 171, L. 1983.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

(1) Loan applications must be ranked according to the following priorities:

(a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.

(b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.

(c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

(d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.

(e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.

(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.

(3) Consideration must be given to the amount of funding from other sources.

(4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients. (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.

(3) The committee shall consider applications and make recommendations to the department.

(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:

(1) prescribing the form and content of applications for loans and the required conservation plan;

(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted; and

(5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

CHAPTER 15

CONSERVATION DISTRICTS

Part 1 — General Provisions

Section

- 76-15-101. Legislative determinations.
- 76-15-102. Declaration of policy.
- 76-15-103. Definitions.
- 76-15-104. Adjournment of hearings.
- 76-15-105. Duties of department.

Part 2 — Creation of Conservation Districts

- 76-15-201. Petition to create conservation district.
- 76-15-202. Hearing on petition.
- 76-15-203. Hearing procedure if additional territory to be included.
- 76-15-204. Board determination of need for district.
- 76-15-205. Criteria for determining need.
- 76-15-206. Determination of administrative practicability of district.
- 76-15-207. Referendum on question of creating district.
- 76-15-208. Administration of hearings and referenda.
- 76-15-209. Board procedure following referendum.
- 76-15-210. Criteria for determining administrative practicability.
- 76-15-211. Appointment of supervisors.
- 76-15-212. Submission of application by appointed supervisors.
- 76-15-213. Processing of application by secretary of state.
- 76-15-214. Evidentiary status of certificate issued by secretary of state.
- 76-15-215. District as governmental subdivision and public body.
- 76-15-216. Limitation on territory included in district.

Part 3 — Administration of Conservation Districts

- 76-15-301. Establishment and reorganization of supervisor areas.
- 76-15-302. Nominations for supervisor.
- 76-15-303. General election.
- 76-15-304. Election of supervisors.
- 76-15-305. Transition to seven supervisors.
- 76-15-306 through 76-15-310 reserved.
- 76-15-311. Governing body of district.
- 76-15-312. Term of office and vacancies.
- 76-15-313. Operation of supervisors.
- 76-15-314. Removal of a supervisor.
- 76-15-315. Administrative functions of the supervisors.
- 76-15-316. Cooperation with municipalities and counties.
- 76-15-317. Cooperation with state agencies.
- 76-15-318. Cooperation between districts.
- 76-15-319. Legal assistance.
- 76-15-320. Legal status of district.
- 76-15-321. Rulemaking authority.
- 76-15-322. Filing of notice of organization of district.
- 76-15-323. Copies of notice transmitted to county commissioners.

SUMMARY - UPDATE
PUBLIC ACCESS ON STATE SCHOOL LANDS IN MONTANA

By: Paul F. Berg^{1/}

EXHIBIT 19
DATE 2-18-91
HB 401-778

Pursuant to the 1889 Enabling Act, the U. S. Congress granted 5.2 million acres of land to Montana. This land is called State School Land. The act classified it as public land.

The 1969 Montana Multiple-Use Act provided for the multiple-use management of these lands, and multiple-use is written into each grazing lease.

The 1972 Montana Constitution provides that all lands granted to the state by the U. S. Congress, and from other sources, shall be public lands.

The 1979 Handbook of the Board of Land Commissioners states that these lands are to be administered under the multiple-use concept.

State law directs the state to manage all wildlife within the state. It does not exclude wildlife on State School lands.

State Rule points out that the state should collect maximum revenues from grazing leases. Instead, it collected as low as \$2.70/Animal Unit Month (AUM), and some leases went for as little as 27 cents/AUM in 1987.

The 1988 minimum grazing rate was \$3.27/AUM on State lands. The average grazing rate was \$7.94/AUM on private land.

According to a Feb. 27, 1988 Billings Gazette article, Carl Schweitzer, a Legislative Fiscal Analyst, submitted his report to the State Legislative Finance Committee. He said that school funding would increase by between \$3.5 and \$5.2 million a year if the state raised its lease rate on grazing lands to fair market value.

The Department of State Lands claims that our State School lands are Trust lands, not public lands, not for multiple-use, not to be managed for fish and wildlife, no public access -- many lessees consider these lands their private lands; 70% are nonresident landowners/lessees.

The Department of State lands is financed by about \$2 million of our tax money each year!

Sportsmen are blamed for spreading noxious weeds. However, what about mailmen, UPS drivers, loggers, ranchers, overgrazing, erosion, inter and intra state hay shipments, cows, wildlife, wind, etc.?

Only about 12 percent, or 624,000, of the 5.2 million acres are in agricultural production, primarily in Daniels and Meagher Counties. The rest (4.6 million acres) is devoted mostly to grazing, forestry, oil and gas operations, etc.

About 70%, or 3.6 million acres of State School lands, is accessible through other public lands or by public roads or trails.

Many State School sections block public access to thousands of acres of Forest Service and BLM lands.

^{1/} Director, Montana Coalition for Appropriate Management of State Lands, Inc.
Statement presented May 6, 1989 at the Montana Wildlife Federation annual meeting, Lewistown, MT, May 5, 6, 7, 1989.

We want public access on those 3.6 million acres. We are not asking for access on the 12% that is agricultural land, or on private land, or to cross private land to get to state land. However, after the crops are harvested, we hope to gain access on the agricultural lands that are State School lands.

Ten other states (Washington, Idaho, Utah, Nevada, Oregon, North Dakota, South Dakota, Arizona, Wyoming and New Mexico) allow public access on their State School lands at no cost to the public, and have not had any particular problems.

Based on 1982 MDFWP data, the average daily expenditures by hunters and fishermen statewide were \$9.50 per acre. So, $\$9.50 \times 3.64$ million acres of State School land suitable for recreational use -- if access was allowed -- would bring in about \$34.6 million to the economy of our state each year.

Sportsmen spend money all over the state for sporting equipment, gasoline, groceries, motels, restaurants, 4X4's, etc. Therefore, this money is hard to track and is not recognized as important, but many permanent and seasonal jobs are provided by these expenditures in Montana.

Even if we assume that recreational use already occurs on some State School lands now, -- because many sections are not identified -- and that only a quarter of the above estimated public use would increase with public access -- that would amount to about \$8.6 million generated by sportsmen each year.

Over the past 15 years, Jack Atcheson, Tony Schoonen and others have been trying to convince the state administration that it should follow the mandates of our state constitution, laws, policies, and rules, and the leadership examples of the 10 other western states that provide public access on their State School lands.

The late State Representative Herb Huennekens submitted many bills to the legislature during his 10-year tenure to gain public access to State School lands.

Jack, Tony, and Jim Goetz, our lawyer, worked diligently with Ron Waterman, the stockgrowers' lawyer, and Mons Tigen and Jerry Jack, the stockgrowers' former and present leaders, for several years.

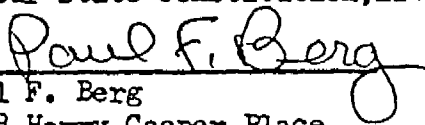
No deal!

Finally, in February 1988, after all negotiations failed, Jim Goetz, representing the Montana Coalition for Appropriate Management of State Lands, Inc., sued the Department of State Lands and the Board of Land Commissioners for failure to comply with the Enabling Act, the state constitution, and state laws, policies, and the rule mentioned above.

Litigation is still in the pre-trial discovery stage.

If any of you folks have been denied recreational access on State School land, or denied permission to cross private property to get to State School lands, I suggest that you write a letter, as I have done, to the Coalition following the examples contained in the handout (copy attached).

We conclude that the public is entitled to equal rights on our public State School lands for public recreational access use and enjoyment and that these lands should be managed following the multiple-use management concept including fish, wildlife and other recreational resources pursuant to our state constitution, laws, policies, rules -- and common sense.


Paul F. Berg
3708 Harry Cooper Place
Billings, MT 59106

SOUTHEASTERN MONTANA SPORTSMEN
ASSOCIATION

EXHIBIT 20
DATE 2-18-91
HB 401-778

Billings, MT
April 11, 1990

Governor Stan Stephens
State of Montana
Office of the Governor
Helena, MT 59620



Dear Governor Stephens:

Your efforts concerning the acquisitions of the Brewer and Nelson Ranches, completion of the Memorandum of Understanding between your office, Bureau of Land Management, Forest Service, and Montana Association of Counties concerning access to public lands are excellent examples of your positive leadership. These accomplishments will benefit the people of Montana and our visitors for generations to come.

Public access to our public lands is the key to equal use and enjoyment of our public lands by all of our people who pay taxes that support the public agencies and management of our lands.

As you know, the negotiations for access on our State School lands have bogged down.

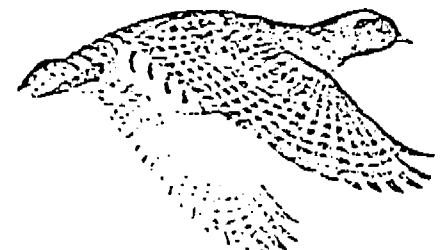
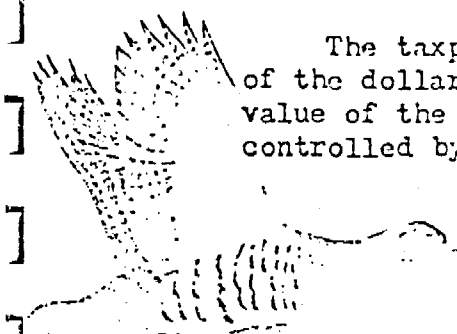
I attended the March 22, 1990 meeting of the State Land Board in Helena, along with other sportsmen representatives from Butte and Bozeman, hoping to have an opportunity to discuss this matter with you and the board members. However, the meeting was closed.

The information packet we sent to you and all State Land Board members last year pointed out that according to the 1972 Montana Constitution (Article X, Sec. 11-(1)) State School lands are public lands. The Multiple-Use Act, No. 72-1-203, Montana Codes, provides for multiple-use management of these lands. The Handbook of the Board of Land Commissioners (May 10, 1979, General Provision 26.3.102) provides for multiple-use administration of these lands. State Law No. 87-1-201 provides for management of wildlife in Montana and does not exclude State School lands. Rule No. 77-1601 indicates that the state should collect maximum revenue from grazing leases.

About 70% of the 5.2 million acres of State School lands that are devoted to grazing, forestry, and oil and gas activities are accessible via public roads and trails and other public lands, and are suitable for hunting, fishing, hiking, camping and other public recreational uses. Many State School sections block public access to large areas of Forest Service and BLM lands, thereby privatizing these public land areas.

The State Land Board is funded with about \$2 million of our tax dollars annually, according to former Commissioner Dennis Hanner.

The taxpayers of Montana subsidize the grazing leases by the amount of the dollar difference between what the lessees pay and the fair market value of the Animal Unit Months of grazing. About 70% of the leases are controlled by nonresidents.



Governor Stan Stephens
Helena, MT 59620

- Page #2 -

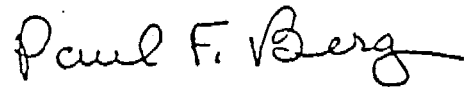
Billings, MT
April 11, 1990

Ten other states (Washington, Idaho, Utah, Nevada, Oregon, North Dakota, South Dakota, Arizona, Wyoming and New Mexico) allow public access on their State School lands with no cost to the public and have had no significant problems with access.

Why does the Department of State Lands and the State Land Board continue to operate in violation of our state constitution, state laws and policy?

We respectfully request an open meeting with the State Land Board as soon as possible to again attempt to resolve this matter in the public interest.

Sincerely yours,



Paul F. Berg, Legislative Committee
Southeastern Montana Sportsmen Association *
3708 Harry Cooper Place
Billings, MT 59106
Phone: (406) 656-2015

* Representing 9 clubs and
5,000 Montana sportsmen

Copy to:

Attorney General, Helena
Supt. of Schools, Helena
Sec. of State, Helena
Dept. of State Lands, Helena
State Auditor, Helena
SMS Assoc. Member Clubs
The Billings Gazette

BEFORE THE STATE LAND BOARD, HELENA, MONTANA, AUGUST 19, 1987

Public access for fishing, hunting, and other recreational purposes is denied to 5 million acres of State School lands in Montana.

We estimate that 70%, or 3.5 million acres of this land contains fish, wildlife, recreational resources and is suitable for public access, use, and enjoyment.

Public access to public lands is a critical problem that was highlighted by a series of recent public events. For example, about 130 people attended a November 1986 meeting of the International Right of Way Association in Helena. Speakers and attendees included the Governor and several other state officials, the Regional Forester, the BLM State Director, numerous legal and university personnel, conservation groups, sportsmen's organizations, county officials, and the general public.

The President's Commission on America's Outdoors requested that each Governor provide input. The Governor had a special task force conduct public meetings throughout Montana. Adequate public access to public lands, including the State School lands, was the number one public concern.

The public is tired of the bureaucratic stalling tactics that continue to deny public access to the State School lands, and wants action now to correct this problem in the public interest.

Let's look at some economic reasons for providing access to State lands.

Over one million hunting and fishing licenses and special permits are purchased each year. They bring in over \$14.5 million to the Montana Department of Fish, Wildlife and Parks.

Resident and nonresident hunters and fishermen devoted over 5 million days and spent over \$207 million in Montana in 1982.

According to the economists, each dollar spent turns over 3 to 4 times in our economy. Therefore, the \$207 million generated over \$800 million to the economy of Montana in 1982.

We estimate that 90% of the 93 million acres of land and water in Montana support some form of fishing, hunting, or other recreation. Therefore, about 84 million acres are available for the use and enjoyment of sportsmen, tourists and other recreationists.

The \$800 million generated in 1982 in Montana by sportsmen's activities amounted to about \$9.50 per acre benefit to our economy.

If we apply this \$9.50 to the 3.5 million acres of State School lands suitable for fishing and hunting, we get an economic benefit of \$33 million each year.

Legislative Committees, Billings Rod and Gun Club and Southeastern Sportsman Assoc., representing 5,000 Montana Sportsmen. Address: 3708 Harry Cooper Place, Billings, MT., 59106. Phone: (406)656-2015.

Table 1. HUNTER AND FISHERMAN EXPENDITURES IN MONTANA - 1982 ^{1/}
(In thousands of days and thousands of dollars - rounded)

Species	RESIDENTS			NONRESIDENTS			TOTAL	
	Days Afield	\$/Day ^{2/}	Total \$	Days Afield	\$/Day ^{2/}	Total \$	Days	\$
Elk	532.8	62	33,033.6	100.6	198	19,918.8	633.4	52,952.4
Deer	719.5	44	31,658.0	107.0	114	12,198.0	826.5	43,856.0
Antelope	20.8	82	1,705.6	20.8	176	3,660.8	41.6	5,366.4
Moose	3.3	80	264.0	.07	179	12.5	3.4	276.5
Sheep	3.1	92	285.2	.3	324	97.2	3.4	382.4
Goat	1.5	80	120.0	.06	180	10.8	1.6	130.8
Bear	43.5	5	217.5	18.6	20	370.0	62.1	587.5
Birds	245.1	27	6,617.7	11.7	37	432.9	256.8	7,050.6
Waterfowl ^{3/}	300.0	27	8,100.0	-	37	-	300.0	8,100.0
Fishes	2,000.0	33	66,000.0	1,000.0	23	23,000.0	3,000.0	89,000.0
Totals	3,869.6	-	148,001.6	1,259.1	-	59,701.0	5,128.7	207,702.6

SUMMARY: Resident and nonresident hunters and fishermen devoted over 5 million days to their sport, and spent over \$207 million in Montana in 1982.

^{1/} Basic data from Montana Department of Fish, Wildlife and Parks. Bowhunters, trappers, tourists, and other recreationists are not included.

^{2/} The average daily expenditure by the average hunter and fisherman.

^{3/} Includes resident and nonresident hunters.

EXHIBIT 21
DATE 2-18-91
HB 401, 178

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

EXHIBIT 22DATE 2-18-91HB 401, 778

PLEASE PRINT

NAME Paul F. Berg BUDGET _____ADDRESS 3708 Harry Cooper Place Billings, MT 59106WHOM DO YOU REPRESENT? Southeastern Montana Sportsman AssociationSUPPORT HB 778 OPPOSE HB 401 AMEND 1

COMMENTS: Over 9 clubs and 5,000 Montana
Sportsmen strongly support public
recreational access to our public State
School lands via H.B. 778

See my statements submitted for
the record for details.

Ten other states allow public
recreational access to their State
school lands without cost to sportsman
and recreationalists and have had no
significant problems with vandalism, trashing,
etc. What is the matter with Montana?
Where is our pioneer spirit?

Paul F. Berg
Feb 18, 1991

John Roylance

EXHIBIT 23
DATE 2-18-91
4014778

4

THE JOURNAL DAILY CHRONICLE

Thursday, December 24, 1987

OUR OPINION

State lands riddle

Fishing access site points out failure of school trust policy

Here's a real head-scratcher for you to ponder between holiday dinners:

The state of Montana recently paid the state of Montana \$20,300 for 5.8 acres of land owned by, you guessed it, the state of Montana. The cost: \$3,500 an acre.

The land in question, which lies along the Madison River, is part of a 540-acre tract of state land that the state leased last year to a Madison Valley rancher for \$308. That's 57 cents an acre.

To further muddy the waters, the 5.8 acres was purchased, state officials say, to provide access to fisherman. Prior to the purchase, some of the land was already being used to provide, guess what, access for fishermen — for no charge.

If the ridiculous nature of the situation hasn't yet settled in, look at it this way — the state paid itself for land it already owned to serve people it was already serving.

If it still sounds confusing, welcome to the weird, wacky world of state lands policy, a sort of Twilight Zone where common sense often disappears in a haze of history, double standards and contradictory intent.

The Madison River access is a perfect example of how the policy doesn't always work toward the best interest of most Montanans.

The state land involved is state school trust land, land which is leased to private users — mostly farmers and ranchers. Money from the leases is put into a fund to help pay the state's share of educating Montana's children.

That's certainly a well-intentioned purpose, but somewhere along the way the purpose has been warped in the political

process.

Why, for instance, does it make sense (or cents) for the state to lease the state school trust land to a rancher for 57 cents an acre and then turn around and sell the same land to other Montanans for \$3,500 an acre?

The money used in the purchase came out of the pockets of Montana sportsmen and taxpayers, who also pay a pretty tithe for schools. Why aren't they entitled to the same low prices the state was charging the rancher? Why the double standard?

For \$20,800, our Madison Valley rancher could have leased the entire 540-acre parcel, at present rates, for the next 67 years.

That only begs another question: If the idea behind state lands is to make money for schools, then why does the state offer the land at such bargain-basement prices to ranchers and farmers?

It seems the state needs to rethink its policy about state school trust lands. Is it really to be a money maker for state schools or is it merely a subsidy for agriculture?

Clearly, the state is bound and determined to manage state school trust land as private property. Lessees presently have every right to keep the public off the property.

For sportsmen concerned about access to public lands, that concept would be easier to swallow if the state were truly managing the land to make the most money possible for schools, and thereby lowering taxes.

To truly maximize that revenue, the state should allow sportsmen access to more state land — and charge them for the use — rather than let lessees put up "no trespassing" signs.

But if the state wishes to continue its practice of giving agriculture a break, it should give sportsmen a break as well in terms of access and the cost of purchasing it.

*Submitted by
Skyline Assoc
Butte*

EXHIBIT 24
DATE 2-18-91
HB 401 + 778

STATE LAND

--MULTIPLE USE AND ACCESS ON--

1. Multiple Use 77-1-203 is law but the law is not being implemented. This has been highlighted by Judge Sherlock's opinion and order, ADV 88-114, June 1990, and Legislative Performance Auditor Jim Pellegrini, June, 1983 - March, 1990.
2. Access on State land is open to the public in Wyoming, Idaho, North Dakota, South Dakota, Utah, Washington, Oregon, California, Nevada, Arizona, New Mexico, BUT NOT MONTANA. Governor Mike Sullivan of Wyoming says since opening State land "there are fewer access problems in recent memory". They pay no access fee either!
3. Are the people of Montana less worthy? If we were not meant to have multiple use, why did we enact the multiple use law in 1969? The Montana Rangeland Resource Act also addresses recreation, date 1947.
4. The people of Montana do not noticeably damage the BLM and USFS public land. They will not destroy their public State land. The public can be trusted, don't you think?
5. The goal of the trust IS to raise money for public schools. But Legislative Performance Auditor Jim Pellegrini says the State is not collecting full market value on grazing and agriculture? Shouldn't something be done to correct this?
6. At this time 50% of the State land budget is paid for out of the General Fund! 100% for land administration is paid out of the General Fund. Yet the public does not have equality, despite our multiple use law. The hunters and fishermen who pay the bills, with tax money, are deprived of multiple use!
7. Only 12% of all State land is used for growing crops.
8. Maps showing State land are available from any BLM or USFS office.
9. Crossing private land is not an issue. In fact, 80% of all State land is touched by roads, trails, and waterways and is connected to USFS and BLM public land. Very little is truly isolated amid private land!
10. Fire control on State land is already funded by the Federal Clark-McNary Act of 1924 and with reciprocal agreements between DSL, BLM, USFS, and county fire departments. In 1990, \$770,000 in Federal funds were deposited in budget for fire control.
11. Weed control--according to Cooperative Extension Service, Montana State University Circular 311, knapweed was magnified by large shipments of weed-contaminated hay from western to eastern Montana because of drought in 1984-85. Hay trucks still travel on back roads and highways without being covered. Logging trucks go unchecked into undeveloped areas daily.
12. Private land must be respected but State land is public land according to Montana's 1972 Constitution and the Enabling Act.
13. Vehicle use on State land must be limited to existing roads and trails with no unauthorized expansion of off-road vehicle use.
14. Lessees are protected from liability claims through existing laws.
15. Governor Stephens, Attorney General Racicot, Mike Cooney, and other Land Board members agree something must be done to permit public access on State land.

Surveys done by the Department of State Lands show 86% of Montanans want to open access. That is a lot of interest.

EXHIBIT 27

DATE 2-18-91

HB 778 February 18, 1991

Mr. Chairman and Members of the Committee

My name is Noel Rosetta. I am a hunter and fisherman. I believe the public has a right to use our state land under applicable laws. I support House Bill 778 for the following main reasons:

1. Multiple-use is guaranteed under the Act of 1969 and has been reinforced by recent opinions of the court and a legislative auditor's report.

2. All other western states have opened state lands to public use and thereby have expressed their opinion that the public use is right and legal.

3. Although the public is taxed to pay costs of state land administration they are presently denied use of these lands. It is only fair to correct this by opening this land to multiple-use.

4. About 80% of all state land can be reached by roads, trails, or by land bridges of other public land (National Forest or BLM land--so trespass is not a major concern).

5. Many other questions on fire, weeds, location, et cetera, have already been taken care of by applicable laws and actions.

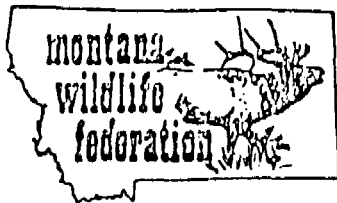
6. HB778 does not require an Environmental Impact Statement (EIS).

On the other hand, the Governor's bill, HB401, does require an EIS: that may delay opening these lands for up to 3 years. This will cost the state about \$690,000 to accomplish what appears to be already a fact.

This issue has been stalled for the last 25 years or more. This situation can be effectively redressed by passing HB778.

Noel Rosetta

Noel Rosetta
1100 Missoula Avenue
Helena, MT 59601



EDUCATION - CONSERVATION

EXHIBIT 26
DATE 2-18-91
HB 401 + 778

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

Lois Thomas
Tony Schoonen
Ramsay, Montana 59748
406-782-1560

INTERRELATIONSHIP OF PUBLIC LAND IN MONTANA

Before Senator Max Baucus and Senator Conrad Burns
Lewistown, Montana
August 5, 1989

The main thrust of my talk is to impress on you the importance of access on all public lands and the interrelationship and volume of these public lands, including State school lands and federal lands.

First, I would like to give you a couple of examples to strengthen my point and show you the frustration residents and non-residents face when they look for places for recreation.

In the Tom Miner Basin, **Bruce Malcolm** of Dunavant Enterprises, Inc. leases one section of State school land, which is blocked to the public. By blocking this one section of public land, thousands of acres of Forest Service land are blocked also. Only his wealthy clients have use of these lands.

Mr. Gene Ayres, formerly of California, leases nine square miles of public State land near Bozeman in the Bear Canyon Management Area, which is padlocked and painted orange. Although Mr. Ayres holds the grazing leases on this highly valued recreational land, which at one time included the Bear Canyon Ski Lodge, he controls the ten sections of Forest Service land adjoining it.

I would like to read you part of a letter from **Don Schaffler** from Ennis. This letter emphasizes that he crossed from Forest Service land to State school lands.

Bill Meyers in the Gallatin Canyon leases 1-1/2 sections of State school land, thus blocking over ten sections of prime wildlife habitat on Forest Service lands.

South of Butte, along Interstate 90 near the Divide exit, **Matt Urlick** leases three sections of State school land which are posted and blocked. Again, closing off thousands of acres of BLM land including the Humbug Spires Wilderness Study Area.

This has been going on all over Montana and is rapidly accelerating. It must be stopped. It would probably be easier to ask where in Montana isn't this happening to our public lands - we have all kinds of examples where it is happening.

Access was the key issue brought out in Ted Schwinden's Recreational Forum by citizens from all across Montana. The problem is compounded even more by the rapid rise in the value of recreation and wildlife. Montana has the best of everything, yet a large majority of Montanans complain that it is harder and harder to find places for recreation.

Leaseholders are violating their lease agreements by either sub-leasing to special interest groups or charging fees for hunting on public lands where they only hold a grazing lease. Public agencies are also violating the multiple use act by allowing these single uses to dominate our public lands.

This was brought out by a recent sting operation in the eastern part of the state. The Fish and Wildlife Service found numerous infractions of illegal guiding on public lands. If the BLM and Forest Service could do more monitoring, they would detour much of the illegal guiding on our public lands.

held under contract of sale or lease with option to purchase with lease monies applicable to purchase price by any person for his exclusive use, shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: En. Sec. 1, Ch. 39, L. 1965; R.C.M. 1947, 84-204.

15-24-1202. Taxable interests in state and other exempt property — assessment. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, such property shall be assessed to such person and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid, provided that the lien for such tax neither attach to, impair, nor be enforced against any interest of the state of Montana or any department, agency, or subdivision thereof.

History: En. Sec. 2, Ch. 39, L. 1965; R.C.M. 1947, 84-205.

15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions. After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. (Last sentence applicable to taxable periods beginning after December 31, 1983.)

History: En. Sec. 1, Ch. 370, L. 1969; amd. Sec. 1, Ch. 387, L. 1977; R.C.M. 1947, 84-207; amd. Sec. 3, Ch. 683, L. 1983.

Compiler's Comments. Taxable periods beginning after December 31, 1983. Amendment: Inserted last sentence.
Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to tax-

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes. The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

History: En. Sec. 2, Ch. 370, L. 1969; R.C.M. 1947, 84-208.

Cross-References

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

IF YOU USE FOR
EXCLUSIVE USE YOU OWN
TAX

DEPARTMENT OF REVENUE

Ex. 27
2/18/91
HB 401 : 778



TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

November 25, 1987

In your recent correspondence you inquired if leased land which was posted should be subject to taxation under 15-24-1203, MCA. More specifically, you inquired if leased land which was posted against trespassing or other private use would be subject to privilege use taxation.

The application of this statute in Montana to public land generally centers around an "exclusive use" test. If an individual enjoys the exclusive use of public land which is otherwise tax exempt, then our responsibility is to assess privilege use tax under 15-24-1203, MCA. As you can see from reading the statute, however, there are specific prohibitions against the application of beneficial use tax to grazing leases or easement of state lands unless the lease provides for exclusive use of the land.

In the example you raise, I presume the lease provides for the lessee to post the property against trespass during the period of the lease. If that is the case, it would be my judgment that land should be subject to privilege use tax.

Before we would make a final determination in this matter, it would be helpful to be able to review sample copies of leases which have been issued to individuals who are posting the leased lands.

If we were to levy privilege use tax assessments, we are required by law to classify the lands according to their use. From your example it would appear the land would be classified as grazing

land. The assessed value of average grazing land in Montana is \$3.72 per acre. It is classified in class 3 at a 30% tax rate. If you assume the average mill levy to be about 220 mills for rural land that would calculate to a tax bill of \$.245 per acre, or less than a quarter.

Sincerely,

Gregg Groepper
Gregg Groepper, Administrator
Property Assessment Division

GG:kc
gg58k

cc: Dan Bucks
John LaFaver

Posting of State Land
a clear indication it is
being used for exclusive use!!
and - subject to exclusive use TAX!!

Posting
the land
exclusive
use tax!!

R-9
3000 acres
public-land
\$735/yr.
exclusive
tax!!

EXHIBIT

27A

DATE 2-18-91

HB 778

February 18, 1991

House Natural Resources Committee
State Capitol
Helena, Montana

Chairman Raney and Members of the Committee:

My name is Alan W. Rollo and I am reading testimony presented by our members in Great Falls who are unable to attend today.

We support HB778 for many reasons, but allowing recreational use of state lands under the multi-use concept as prescribed by law is the most important consideration.

Most of our surrounding states have their state lands open to all citizens for recreational use under the multi-use concept. While we have this same mandated multi-use concept in Montana, it has only been in theory and not in fact; based, we have been told, on economic factors. HB778 addresses this economic issue by having the sportsmen pay for this right of multi-use. Sportsmen have and are still willing to pay for what they use.

While sportsmen in surrounding states have enjoyed the benefits of true multi-use with no financial reimbursement, the sportsmen of Montana have addressed this financial quantum by assessing a fee for recreational use of state lands. Half of the money goes to the Department of State Lands for management and the other half goes to the state school trust, who should be the ultimate beneficiary.

The intent of this bill is not to interfere with the rights of the lessee, but to comply with the multi-use concept. We acknowledge that there may be a compelling need to restrict or close public access for a specific classification of land, ie. the 12% of state lands utilized for crops should be denied access during the growing period. This bill addresses this issue, enabling the board to close any section when convincing evidence dictates.

There is also a concern of potential property damage and liability. There are existing laws to protect the lessee, which should keep this problem to a minimum through proper enforcement of these appropriate regulations. This bill even goes a step farther by allowing access to only those sections that can be reached by a public right of way, not through private property. It also states that vehicle use would be limited to existing roads and trails, with no expansion of off-road vehicle use allowed.

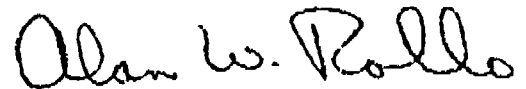
Ex 27A

2-18-91

HB 778

For more than a decade we have attempted to resolve this matter through the State Lands Board to no avail. This bill, as you can see, has been thoroughly researched to eliminate those potential problems that the State Lands Board and others are concerned about. Let us all put this issue behind us by passing HB778.

Sincerely,



Alan W. Rollo
Great Falls Spokesman
The Montana Coalition for
Appropriate Management of
State Land

EXHIBIT 27B
DATE 2-18-91
HB 401-778

STATE LAND

February 18, 1991

According to Montana's Multiple Use Law and ^{but} its Constitution, State land is public land. In order to better administer State land, as early as 1967, the 40th Montana Legislature passed Senate Joint Resolution 19, which requested the Governor to appoint a committee to study the diversified uses of State land and to recommend such plans and programs as the Committee deemed necessary to provide for the better overall use of State land for both recreation and agricultural pursuits to the fullest benefit of the public in general.

The Committee, including then Commissioner of State Lands Mons Teigen, made an important endorsement for multiple use management of State public land. Among other things, the Committee recognized grazing, agriculture, or recreation may be the highest and most important of a single parcel of land. At another meeting, Mons Teigen stated the Committee envisioned even berry-picking as being included in multiple uses.

The Committee came up with a definition of the multiple use concept which is identical to the definition adopted by the Montana Legislature in 1969.

Multiple Use Management, 77-1-203.

(1) The board shall manage state lands under the multiple use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple use values.

A third statute 36, provides that the department inventory such items as wildlife use, public use, aesthetic values, and cultural values prior to the classification of state trust land.

Although, recreation is not specifically mentioned in the multiple use management plan, neither is grazing or agricultural.

On the back of each grazing lease, multiple use is clearly written.

Despite the direction provided by the Legislature, the Department of State Land has failed miserably to live up to their commitment to the people of Montana. This was pointed out by the general public for many years and by Legislative Performance Auditor, Jim Pellegrini, in June 1983 and again in March 1990.

In depositions taken from Dennis Hemmer, past State Land Commissioner, Hemmer acknowledges that although many things were promised to the public concerning multiple use and a recreational inventory, nothing was done (Deposition Exchange 56, pages 54, 48, 49). Hemmer further testified that there were gross screens used to exclude land as recreational.

Clearly, the Department of State Lands has done everything possible to fool the public. This is pointed out again in the State's motion to dismiss a lawsuit and Judge Sherlock's response, pages 36, 37, and 38, "The Constitution gives the Legislature the discretion to pass a multiple use statute and the Legislature did so. Failure to follow this statute would seem to conflict with Legislature's Constitutional grant of authority to enact such a law which was somewhat foreshadowed by the delegates."

If we were not supposed to have a multiple use law, why was it enacted?

The Montana Rangeland Resource Act 76-14-102, clearly points out that wildlife habitat, recreation, and ranching are part of the act. Obviously, state land is part of Montana.

John Gaffee

TESTIMONY ON H.B. 401 & H.B. 778

HOUSE NATURAL RESOURCES COMMITTEE
February 18, 1991

EXHIBIT 28
DATE 2-18-91
HB 401-778

Mr. Chairman and members of the committee. My name is Jim Peterson. I am a farmer and rancher from Central Montana and my family operation includes state land. I also am representing the Montana Stockgrowers Association, which represents more than 3,000 livestock producers in Montana, the Montana Cattle Feeders Association, the Montana Wool Growers Association, many of whom have state leases within their operations.

Montana Stockgrowers Association rises in support of H.B. 401 and in adamant opposition to H.B. 778. While both bills address the question of recreational access to state lands, H.B. 401 authorizes the Board of Land Commissioners to implement a program allowing recreational access to state land. On the other hand, H.B. 778 requires the Board of Land Board Commissioners to open up existing state land leases to the public for recreation use. And only if certain clear and convincing conditions are met will any public access to state land be restricted.

In making any decision with regard to recreational access to state school trust lands, the Department of State Lands and other agencies of government must be governed by the trust responsibility imposed upon the Board of Land Commissioners and by the provisions of the Montana Environmental Policy Act.

It is the obligation of the trustees of the educational trust fund to protect the trust assets and to secure optimum value for the sale or lease of those assets. The Montana Environmental Policy Act requires that any agency of state government which undertakes an action covered by the Act must secure accurate and adequate information so as to document with certainty the effect the action will have upon the social and economic structure of the State of Montana.

The Board of Land commissioners, in fulfilling its trust responsibility, must get optimum value for the recreational attributes of the tracts of land which will be impacted by any policy implemented. A responsible decision cannot be made with regard to the value of the recreational attributes on such lands until the land itself has been identified. The Department of State Lands must determine which tracts of land are accessible without trespass across private property. An assessment cannot be made by simple reference to a map. For example, maps prepared by the U.S. Forest Service and the United States

Bureau of Land Management do not always differentiate between public and private roads.

Once the tracts are identified, it will then be necessary to determine in some systematic way to the value of the recreational attributes on the accessible tracts. Some analysis of this must be conducted before the value of the recreational attributes can be established to the degree that is required to satisfy both the Environmental Policy Act and the trust obligation of the Board of Land Commissioners.

When land location and recreational value is determined, then it becomes the responsibility of the State to perform the tasks (that protect the land) which historically have been performed by the agricultural lessee. Some of the tasks include:

1. Properly management and maintenance the game resource itself through control of hunter or recreation density.
2. Vehicular traffic control. Even if off-road travel is prohibited, someone has to make sure it does not happen.
3. Fire protection and suppression. And even more important, fire prevention. If the rancher-lessee cannot control access on the property, with the State assume liability?
4. Control of noxious weeds. This cost is now the responsibility of the lessee and if unrestricted public access is granted, there must be some control and cost reimbursement associated with weed control.
5. Protection of the livestock grazing on state land. Will the rancher be able to direct hunters to an area where no cattle are located or prohibit hunting where there are cattle? If not who assumes that liability?
6. Protection of personal property and improvements --water tanks, windmills, irrigation systems and buildings.

All of these issues must be addressed, along with damage reimbursement when damage occurs. Each of the above costs must be correctly determined. If the Department, or this legislature, does not assume the responsibility contemplated by any new arrangement, and the the new program is not fully funded, the result will be deterioration of the state school trust lands. And this would be an abrogation of the Land Boards trust responsibility.

The agricultural community believes that a decision with regard to recreational access to state school trust lands may not properly be made until all of the information affecting that decision is available to the Board of Land Commissioners. And that information must be all encompassing and accurate. The recreational EIS that is currently included in the Governor's budget would provide that information. And H.B. 401, with some funding changes, would provide the mechanism to implement what could be a very workable program.

However, the sledge hammer approach proposed in the H.B. 778 is not the answer and will continue to polarize the issue worse in the future.

We strongly recommend these bills be referred to sub-committee where a reasonable approach, as proposed in H.B. 401, be brought back before this committee.

Thank you.

TESTIMONY ON H.B. 401 & H.B. 778

HOUSE NATURAL RESOURCES COMMITTEE
February 18, 1991

EXHIBIT 29
DATE 2-18-91
HB 401-778

Mr. Chairman and members of the committee. My name is Robert DuPea. I am a farmer and rancher from White Sulphur Springs. I rise in support of House Bill 401 and in opposition of House Bill 778.

It is the obligation of the trustees of the educational trust fund to maximize the recreational returns to the school trust. If recreational access is granted, it will then require the state of Montana to become responsible for the following:

1. Proper managment and maintenance of the game resource.
2. Vehicular traffic control.
3. Fire protection and suppression, and prevention.
4. Control of noxious weeds.
5. Protection of the livestock grazing on state land.
6. Protection of personal property and improvements --water tanks, windmills, irrigation systems and buildings.

Each of the above costs must be correctly determined. If the Department, or this legislature, does not assume the responsibility contemplated by any new arrangement, and the new program is not fully funded, the result will be deterioration of the state school trust lands.

Thank you.

CHAIRMAN

Raney

AND MEMBERS OF THE COMMITTEE:

EXHIBIT 30
DATE 2-18-91
HB 401-778

MY NAME IS BOB FOUHY. I AM A LIFE MEMBER OF THE NATIONAL RIFLE ASSOCIATION, AM A HUNTER SAFETY INSTRUCTOR FOR THE DEPARTMENT OF FISH, WILDLIFE AND PARKS, PRESIDENT OF THE WEST DANIELS GUN CLUB, A BOARD MEMBER FOR THE LAND MANAGEMENT COUNCIL, A DEPUTY SHERIFF FOR OVER 20 YEARS FOR DANIELS COUNTY, AND I LEASE SCHOOL TRUST LANDS.

I HAVE ALWAYS ALLOWED HUNTING ON THE SCHOOL TRUST LAND WHICH I LEASE. THIS HAS MAINLY BEEN POSSIBLE BECAUSE I CURRENTLY HAVE THE AUTHORITY TO PROTECT THESE LANDS FOR THE STATE OF MONTANA AND MY LEASE-HOLD INTEREST.

SINCE I AM A LAW-ENFORCEMENT OFFICER, I AM ALSO AN EX-OFFICIO WARDEN FOR THE DEPARTMENT OF FISH, WILDLIFE & PARKS.

DANIELS COUNTY IS 24% SCHOOL TRUST LANDS WITH THE BULK OF THIS BEING IN THE WEST END OF THE COUNTY. THIS AREA IS A MYRIAD OF SCHOOL TRUST LANDS AND PRIVATE LAND, AS YOU CAN SEE BY THIS MAP. THERE IS VIRTUALLY NO BLM LAND IN THIS COUNTY.

AS IT STANDS, EVEN NOW, IT IS ALMOST A TOTAL IMPOSSIBILITY TO ENFORCE THE EXISTING STATE STATUTES IN REGARDS TO THE WILDLIFE LAWS IN THIS AREA. EVEN THE LOCAL PEOPLE HAVE NO IDEA WHERE STATE LEASE BOUNDARIES ARE IN RELATION TO PRIVATE LAND.

WE HAVE ONLY ONE LOCAL WARDEN IN THIS AREA AND HIS DISTRICT IS THE LARGEST IN MONTANA--ROUGHLY COVERING THE AREAS OF DANIELS, SHERIDAN, AND ROOSEVELT COUNTIES.

THIS LEGSLATION [HB778] WOULD EFFECTIVELY TAKE AWAY MOST OF THE REMAINING ABILITY OF THE LEASE-HOLDER TO PROTECT THESE LANDS FOR THE COMMON GOOD OF THE PEOPLE OF MONTANA. THE LESSEE IS DIRECTLY RESPONSIBLE FOR THE PHYSICAL APPEARANCE OF THESE LEASES. IN RECENT YEARS, THE DEPARTMENT OF STATE LANDS STRIPPED THE LESSEE OF THE ABILITY TO POLICE DAMAGES TO AND GARBAGE LEFT ON THESE LANDS BY SEISMOGRAPHERS. THE RESULT WAS INCREASED GARBAGE AND MORE DAMAGES ALL WHICH HAS TO BE PICKED UP OR CORRECTED BY THE LESSEE WITH VERY LITTLE COMPENSATION FOR HIS ADDED COSTS, LABOR AND TIME. THE PICTURE IN THE UPPER LEFT-HAND CORNER OF THE HANDOUT EFFECTIVELY ILLUSTRATES JUST ONE INSTANCE OF THIS.

BEGINNING WITH SECTION 8 UNDER SECTION 87-1-102 PENALTIES, OF HB 778, WHILE THE NEW INCLUSIONS WHICH ARE INSERTED IN CURRENT STATUTES MUST BE WELL INTENTIONED, IT BASICALLY ONLY AMOUNTS TO A LIP SERVICE AND NOTHING ELSE BY THE PROPONENTS OF THIS BILL. IT IS UNDERSTANDABLE THAT THEY CANNOT REALIZE THAT THESE STATE STATUTES ARE ALMOST UNENFORCEABLE WHEN THE ABILITY OF THE LESSEE TO POLICE THESE LANDS IN AN AREA LIKE THE WEST END OF DANIELS COUNTY IS REMOVED. THERE ARE MANY MORE AREAS SUCH AS THIS IN EASTERN MONTANA.

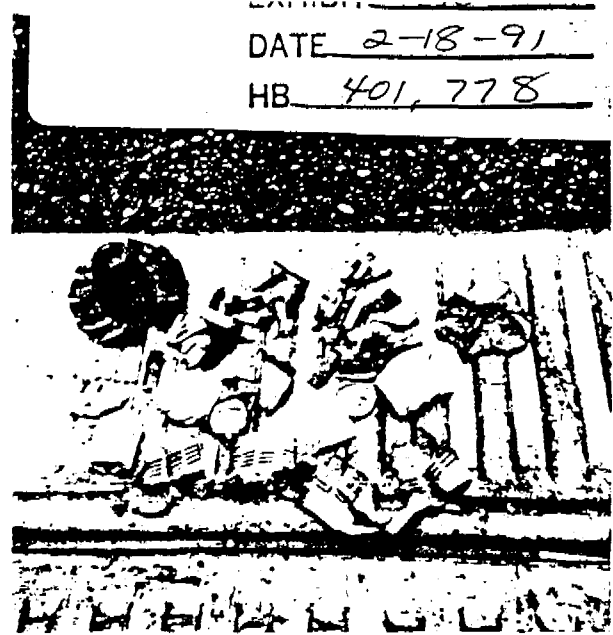
BY GRANTING WHAT WOULD BASICALLY BE UNLIMITED ACCESS THIS AREA WOULD BE OVER-RUN WITH HUNTERS AND RECREATIONISTS SINCE IT WOULD EFFECTIVELY BECOME OPEN PUBLIC LAND FOR RECREATION IN A HUGE AREA WHERE THERE IS NO BLM OR FOREST SERVICE LAND.

THANK YOU,

Robert J. Forby

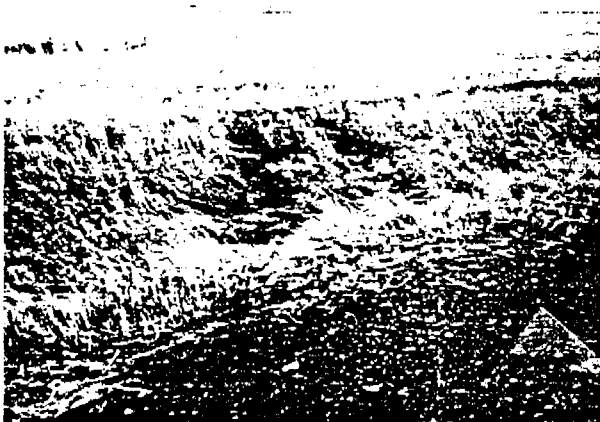


Whitetail buck became entangled in seismograph wire left on state lands shortly before hunting season. Left front leg was dislocated and wire was choking the animal to death.



A collection of beer cans, cartridge cases, pop cans, shotgun shells, oil cans, and seismograph litter left by hunters, recreationists and seismographers.

EXHIBIT _____
DATE 2-18-91
HB 401-778



Track damage left by hunter's vehicles leaving a main road into CRP where there was not an approach. Where one goes, they all go.



Track damage left by hunters chasing deer with a pick-up truck in a stubble field that had just been planted to winter wheat.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT 31
DATE 2-18-91
HB 401

BILL # HB 401; TESTIMONY BY: Lorna Frank

DATE 2/18/91; SUPPORT Support; OPPOSE _____

Mr. Chairman, members of the committee:

For the record, I am Lorna Frank, representing over 4,000 Farm Bureau members in the state.

We support HB 401 as it addresses many of our concerns on leasing state land for recreational purposes. It addresses compensation to other lessees for damage to their improvements, prohibits trespass onto private property, and addresses the weed control issue. It also limits the liability of the state and the lessee.

As we see it, the bill would not go into effect until after the EIS on recreational use of state lands is completed. The EIS is essential in determining where we are now, and where we want to go in the future.

~~We are this committee to do pass HB 401.~~

We are adamantly opposed to HB 778 as it would open all existing state land to public access. It does not address weed control or the liability issue.

We understand these two bills will go to a sub-committee to be worked on, we would prefer HB-401 as the vehicle to move forward.

SIGNED: _____

Lorna Frank

== FARMERS AND RANCHERS UNITED ==

DATE 2-18-91

HB 778

We the undersigned residents of Daniels county, which has 23.8%
of the School Trust Lands in Montana, do strongly oppose HB 778.
We urge you to kill this bill in committee.

NAME	OCCUPATION	ADDRESS
Louise Nielsen	Farmer	Perles, Mt. 59253
Clark A. Holmes	Farmer	Perles, Mt. 59253
Louise Nielsen	"	" " 59253
Erce Fladager	Rancher	" " " "
Nola Fladager	"	" " " "
Norman Nelson Jones		Perles, Mt. 59253
Lester Esterson		Perles Mt. 59253
Harvin Thompson	Farmer	Perles Mt 59253
Ray L Brandt	Rancher/Farmer	Perles Mt 59253
Art Enloe		Perles Mt 59253
Mark Dighana		Perles, Mt. 59253
Joe Dighana		Perles, Mt. 59253
Larry Dighana	Farmer	Perles Mt. 59253
Tommy Dighana		Perles, Mt. 59253
Samuel Kyos		Perles, Mt. 59253
Ernest R. Foubey		Perles 59253
Helen Foubey		Perles Mt 59253
Patricia Foubey		Perles Mt 59253
Paul A. Fladager		Perles Mt 59253
Norman Miller		Richland, Mont. 59260
Wendy Gray		Richland Mont. 59260
		" " Mt 59260

Name Occupation

Mr. Linde Nelson

Address

Bill Thadager Farmer

Box 456 Peerless, MT

Lawrence Fouchy Farmer

Box 44 Richland MT

M. Brown Farmer

Box 561 Peerless MT

John Thompson Farmer

Box 584 Peerless MT

Arnes Lundby "

Peerless Mont.

Carol Fouchy Farm Wife / Secretary Peerless, MT

Judy Fouchy farm wife - teacher

Peerless, MT

John Thadager Farmer Rancher

Scobey, Mont

Ray Thadager Farmer Rancher

Scobey, Mont

Kenny Thadager Farmer Rancher

Scobey, Mont

Alvin Olsen - Farmer Scobey Mont.

Leonard Hersel Farmer - Rancher Peerless, MT.

Hersel Ranches, Inc. Farmer Rancher Richland, MT.

Edwin Hersel Farmer - Rancher Richland, MT.

Andrew E. Hersel Farmer - Rancher Richland, MT.

Loyce Chapman Farmer Peerless, MT

Arnes Thadager Farmer - Rancher Scobey MT.

Peerless Valley Farms Peerless MT

Ray Palmer Jones, pres.

Wayne F. Anderson Rancher Peerless MT.

EXHIBIT 32DATE 2-18-91HB 778

Name	Occupation	Address
Wend H. Oglesby	Farmer	Pearles Mt
John J. Dighans	Rancher	Pearless, Mt.
Edwin A. Dighans	Rancher	Pearless Mt.
Mary E. Oglesby	Farmer	Pearless, Mt.
Carol H. Dighans	Farmer	Pearless, Mt.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

1 of 4

Natural Resources

COMMITTEE

HB BILL NO. 401

rec. access to state lands

DATE 2-18-91

SPONSOR(S) Rep. Dave Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
BOB BUGA	PRICKLY PEAR SPORTSMAN - HILLAND		X
BILL HOLDORF	SKYLINE SPORTSMEN BUTTE		✓
GARY L. STURM	Prickly Pear Sportmen Assoc		X
TACK ATKINSON	BUTTE CITIZEN		X
TACK STURM	BUTTE SPORTSMEN		X
LORRY THOMAS	ANACONDA SPORTSMEN		X
TONG SCHOONEN	M. W. F.		X
MARVIN BARBER	A. P. A.	X	
PAUL F. BERG	Southeastern Montana Sportsman Association		X
TA KUMMER	prickly pear		X-
THOMAS LOFTSGAARD	Land Mgmt Council	X	
WARD JACKSON	SW. M.T. SPORTSMEN	X	
DENNIS CASH	DSL	X	
Robert Forney	Land management Council	X	X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

2 of 4

VISITOR'S REGISTER

National Resources

COMMITTEE

BILL NO.

401DATE 2-18-91

SPONSOR(S)

Rep. Dave Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Linda Taper	Golden Valley Cattlewomen	401	X	
Kathleen Cill - Ryegate	Golden Valley Cattlewomen		X	XXXX
Ken Stevens	Public Land Access Assoc, Inc		X	
WILLIAM A FAIRHURST	Three Forks Sportsmen		X	
Rep J Nelson	ND 19		X	X
VALERIE HORTON	MWF		X	
George Schunk	AG			
Jim Tilton	MSGA			X
Robert Dupree	MSGA			X
Jim Thore	MSGA			X
Larna Frank	Damn Bureau			X
CAROL MASHER	Mt. CATTLEWOMEN			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

3 of 4

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 401
 DATE 2-18-91 SPONSOR(S) Rep Dave Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Roylance	Self		X	
Noel Rosetta	Self		X	
Dave Brown	sponsor - HD #72			X
Kay Nrenberg	Wife			X
John North	Dept of State	401		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

4 of 4

Natural Resources

COMMITTEE

BILL NO. 701

DATE 2-18-91 SPONSOR(S) Dave Braun rec occur on state lands

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Kim Enkerud	MT Assn. State Grazing Dist.	401	778
Jeani Morrison	Buffalo Mt Ranchers	401	778

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

1 of 3

Natural Resources

COMMITTEE

BILL NO. HB 778
rec use on state lands

DATE 2-18-91

SPONSOR(S) Dave Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JACK ATCHESON	Butte citizen	✓	
JACK D. JONES	Butte Sportsman.	✓	
LORRY THOMAS	FINACONDA SPORTSMEN	✓	
Tony Schaefer	MIKE F.	✓	
John R. Gibson	Butte Rod & Gun Club	✓	
Marvin Barber	a. p. n.		✓
CATHY A. BROWN	Helena Sportswoman	✓	
Paul F. Berg	Southwestern Montana Sportsman Association	✓	
TA KUMMER	Prickly Pear	X	
G. Vince Fischer	Skyline Sportsman Rod. Club	✓	
Robert Fowley	Land Management Council		X
Tom Loftsgaard	Land Mgmt Council		X
WAIRID JACKSON	SW. M.T. STOCKMEN		X
Linda Lohr	Golden Valley Cattlemen		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

2 of 3

Natural Resources

COMMITTEE

HB BILL NO. ~~778~~ 798
rec. access to state lands

DATE 2-18-91

SPONSOR(S) Rep Dave Brown

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gary L. Sturm	Prickly Pear Sportsmen Ass.	X	
Bice HOLDORF	SKYLARKIE SPORTS MEN BUTTE	✓	
BUB BIGNI	PRICKLY PEAR SPORTSMAN	X	
Kathleen Ott Riegatz, Mt	Holden Valley Cattle Ranch		X
Ren Stevens	Public Land Access Assoc., Inc	X	
WILLIAM A FAIRHURST	Three Forks Sportsmen	X	
Rep L Nelson	ND 19		X
VALERIE HORTON	MWF	X	
George Schunk	AGT		
Kay Drenberg	WIFE		X
Jim Peterson	MSG A		X
Robert Quippa	MSG A		X
Lee Moore	MSG A		X
Lorna Frank	Farm Bureau		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

3 of 3

NATURAL RESOURCE COMMITTEE BILL NO. 778
DATE 2-18-91 SPONSOR(S) REP. DAVE BROWN

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CAROL MOSHER	MONT. CATTLEWOMEN		X
Noel Rosetta	Self	X	X
John Roylance	Self	X	
DAVE BROWN	SPONSOR - HD #72	X	
Stan Bradshaw		✓	
Keith Jacobson	Sec of State	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

through. One way or another, he wants to see the extension forestry program funded.

REP. GILBERT said the bill raises too much money. Based on the current fiscal note, there would be \$256,000 per year after 1993. People in the timber industry don't think that much money is needed.

REP. COHEN said the Legislature doesn't usually ask the people who are going to pay tax to approve the tax. When the new fiscal note is received, the bill could be amended on the floor to reduce the rate so that it is appropriate for the extension forestry program.

Vote: HB 476 DO PASS AS AMENDED. Motion failed 8-9. Rep. Toole did not vote. EXHIBIT 2

Motion/Vote: REP. O'KEEFE MOVED HB 476 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 401 AND HB 778

Discussion: REP. COHEN said a group of concerned sportsmen and representatives from various departments met with REP. BROWN and crafted a bill, which was presented to the subcommittee. The subcommittee drafted a compromise bill, which was incorporated into HB 401. It includes a fee for general recreational use of state land and provides a contingency to deal with impacts from use of leased lands.

The subcommittee produced another proposal that was put in HB 778. HB 778 asserts that Montanans have a right to use all public lands. It requires the purchase of a permit to use leased lands. The Board of Land Commissioners will adjust the rate in case more money is generated than needed to deal with impacts.

Two questions have to be answered. One deals with the Enabling Act, in which the federal government presented public trust lands to the states. The act says states will use these lands to generate state revenue. This has been addressed in different ways by different states. California transfers the money between departments. Montana put in its legislation a similar transfer to address that question.

The other question involves the state constitution and a number of court cases. State attorneys believe the state constitution requires the state to maximize the return on public trust lands for the educational trust fund. This problem is not addressed in HB 778 but is addressed in HB 401. He presented proposed amendments to HB 401. EXHIBIT 3

CHAIRMAN RANEY said both bills are sponsored by REP. DAVE BROWN, HD 72 - Butte. He asked REP. BROWN to review the bills.

REP. BROWN said the subcommittee's recommended draft of HB 401 is a compromise, but not everyone is happy with everything in it. Stock growers and agriculture interests prefer not to deal with it at all. They would like to see an Environmental Impact Study (EIS) or an economic impact study done on recreational use. He believes this needs to be done for all use of state lands.

It was agreed that the subcommittee would move forward with compromise language on lands access and separately push the \$300,000 that is in the budget, until it could be decided how and where it should be used.

HB 401 sets the premise that all public lands are open to the public but they can be closed for certain purposes. The land board would take care of that through rules and public hearings, when necessary. It sets up an account to address weed control, damage to improvements, and other things that may happen to leaseholders. If this bill is passed, sportsmen will back off the lawsuit they filed against the Department. It will not affect state land leases in 98 percent of the cases. In remaining cases, the impact will be minor.

He submitted an amendment in response to legislators' questions regarding access to land already opened to the state. EXHIBIT 4 The amendment limits use of state lands to fishing, hunting and other activities determined by the board. The second amendment allows the board to establish a fee, or whatever is needed. It removes minor areas that would be difficult to enforce and accommodates concerns of a number of people.

The chairman was interested in dropping the fees and putting in an appropriation. That could be done by striking sections of the bill that allow a fee and inserting the language "in an appropriation." REP. COHEN's bill is a major departure from the efforts of the compromise. He strongly opposes REP. COHEN's bill. He urged the committee to support the subcommittee's compromise bill of HB 401 and his proposed amendments.

CHAIRMAN RANEY asked REP. BROWN why he wanted to restrict the definition of recreational use to hunting and fishing, which may be a small part of the activity that would take place. REP. BROWN said approximately 175,000-180,000 acres of Montana's 500,000 acres of state forest land are leased for grazing. The piece of state forest land that has been open to public access but not grazing represents about 8 percent of Montana's state lands. Sportsmen want access. The most flack over the bill has come from picnickers, berry and mushroom pickers, and snowmobilers. The amendments leave existing access the way it is and open access to the other 92 percent of state lands, unless the board decides particular areas must be closed for certain reasons.

CHAIRMAN RANEY asked REP. BROWN if his amendment No. 2 would not be needed if someone offered an amendment to remove all fees and have it funded by the General Fund. REP. BROWN said the part

about the money wouldn't be needed, but the part about the rules would be. There may be some other use that the board would have to address. **CHAIRMAN RANEY** said amendment No. 2 doesn't address rules. It just says it may establish fees. **REP. BROWN** said OK.

REP. GILBERT asked if recreational fees would be charged on leased land only or on all state lands. **REP. BROWN** said all state lands, but the amendment would limit it to leased lands that may or may not be accessible now.

REP. GILBERT asked if a license would be needed to go on state forest land. **REP. BROWN** said hunters would need one. The state constitution requires the Legislature to reimburse the educational trust for use of those lands. A fee must be collected to reimburse the trust. Money also should be collected to manage those lands appropriately. His bill originally called for a fee of \$1. Stock growers wanted a fee of \$50. The state lands board's bill included a fee of up to \$2. Everyone settled on \$10 in the compromise bill. The subcommittee put it at \$5. By limiting this to fishing and hunting, the state may get into restrictions of federal acts that prohibit the state from tagging a smaller fee onto the conservation license. He cannot work that out in the time he has. A fee is needed, but it should be lower.

REP. GILBERT asked if this could set a precedent and encourage the U.S. Forest Service to start charging fees. **REP. BROWN** said he didn't think so, given the attitude in surrounding states. The federal government has been reluctant to do that.

REP. GILBERT said it seems the state would be discriminatory if it charged fees to only anglers and hunters. Others can impact the land. He asked if people are going to be told that they can't take pictures on state land unless they have these licenses. **REP. BROWN** said that is the bind the state is put in unless the state wants to allow free access.

REP. GILBERT said he disagrees somewhat with **REP. BROWN's** approach to the constitutional mandate. Montanans have been hunting and fishing on state land since the state was founded. No one has ever been charged. It would be a great disservice to the public to say this is public land but, because schools are supposed to get the money and the state has been lax for more than 100 years, people will now be charged for using it. That is ridiculous.

REP. BROWN told **REP. GILBERT** he is accurate about land in some areas, but most state land has not been accessible in the past. That is what prompted this bill and the pending lawsuit. **REP. GILBERT** said that historically, access has been granted in state land and forested areas accessible by public roads that are not expressly closed. The state is not setting a precedent. This is the way the state has done business.

REP. BROWN said the issue arose because the land board decided it

couldn't prevent access, access wasn't allowed without an EIS to determine impacts, and because of the constitutional nature of the trust fund. Although people may have been doing this for 50 years, they probably should have been charged for it. Nearly everyone expects sportsmen to win their lawsuit. If they do, activities will change in undesirable ways. Stockmen have a valid point when they say everyone should have to pay for state lands if they do.

REP. COHEN said REP. GILBERT's words echo what he said in the Conference Committee. Most citizens believe they have an inalienable right to state lands access. He referred to Section 11 on Page 8 of both bills. In HB 401, there is compromise language which is not a compromise of legislators, nor a compromise of the people. It was a compromise between attorneys and representatives of special interest groups.

He noted that HB 401 requires a license for recreational use of state lands. HB 778 requires a license for recreational use of leased state lands. That was what REP. GILBERT referred to. The statement of intent as amended in HB 778 says the public has a right to use state lands, but that the interest and improvements of leaseholders must be protected.

REP. REAM said it appears a stamp on a conservation license could be required instead of a restriction on hunting and fishing. REP. BROWN said that is possible, but he won't have time to figure it out before the matter gets to the floor.

REP. REAM said he would like one of the attorneys to address the constitutional issue. He wondered if the land board would turn around and put these activities back in through its rule-making authority. REP. BROWN said no. He worried about that too, but flexibility cannot be eliminated. Something may come up that the Legislature did not anticipate and the land board needs to address. It would be intolerable for the public to have to wait two years for the Legislature to come back and change the statute, when authority could be granted here. He suggested Assistant Attorney General George Schunk address the constitutional issue.

CHAIRMAN RANEY said he would rather hear from John North, Department of State Lands (DSL) Chief Legal Counsel, since DSL requested the bill.

Mr. North said leased lands cannot be separated from non-leased lands. The requirement is contained in the Enabling Act of the Montana Constitution for the State Land Board to obtain full market value for any interest in state lands that it conveys or gives the rights to. The question is whether the land board would be giving away something valuable. For a number of years, it could be argued that the right to hunt on land had no value in Montana. But over the last 20 years, the right to hunt has come to have value because people are paying for that right.

The constitutional full-market value requirement applies to all state lands. If there is no charge, there must be a determination that the right has no value. It has been DSL's opinion in the lawsuit that the right to hunt has value on at least some non-leased lands.

REP. ELLISON asked if DSL would be in a similar position if stockmen had filed suit instead of sportsmen. Mr. North said the opportunity to recreate on state land has become a valuable right in the last 25 years. It is at that point that the constitution and Enabling Act would require the State Land Board to begin receiving compensation to allow people to recreate.

Motion: REP. FAGG MOVED DO PASS ON THE AMENDED BILL AS PUT FORTH BY THE SUBCOMMITTEE, WHICH WAS REP. BROWN'S HB 401, AND MOVED THE TWO AMENDMENTS REP. BROWN SUGGESTED ON HB 401.

Discussion: REP. FAGG praised REP. BROWN, the State Land Board and the subcommittee for their work on the bill. HB 401 is a good compromise bill. He supports the bill with REP. BROWN's two amendments. Things are changing in Montana. The money raised through this bill will go to schools, which is as it should be. Everyone should be treated the same, that is why he opposes REP. COHEN's substitute amendments. It isn't proper to charge people to hunt on leased lands and not charge people who would hunt on state-owned forest land.

CHAIRMAN RANEY said he would like to strike all fees and assess a General Fund appropriation to reimburse the school trust and to appropriate money to address any damages. While it is true the fees would go to schools, it is also true that the committee would be changing one of the things that makes Montana what it is, and that is free public lands. It would no longer be free. People can argue that \$5 isn't much, but a different Legislature could raise the fee to exorbitant amounts. No one can say that won't happen. This would create a Sherwood Forest.

REP. COHEN spoke against REP. FAGG's motion. He said he appreciates the work that went into the bill. HB 401 puts into place the principle that has not been recognized by any state in the nation. That is a principle that says people can be assessed for the value of recreation. This is the political agenda of a small group. That is why he tried to parallel HB 778 to HB 401 in every way except that people would pay a fee to create a compensation account, instead of an access fee for leased land, so that any damage to leased land could be compensated.

CHAIRMAN RANEY said the committee has a "Do Pass" motion on HB 401 and the large set of amendments that make the new HB 401, EXHIBIT 3. He did not accept the motion to put on the small amendments. EXHIBIT 4

REP. GILBERT said the reason this problem got started was because sportsmen wanted access to lands that were leased by agriculture.

The people in agriculture said they were maintaining the fences, etc. That is true in some cases and not in others. Not all state land is being treated equally. The question was whether lessees should be compensated if sportsmen were allowed onto leased land. He has no problem with that, but this has become a question of whether everyone should be charged to go on state lands. The whole issue has been turned around because of greed, and that will anger Montanans. It is their land.

The issue is commercial versus recreational use. Fees should be charged if the land is used for commercial purposes. A citizen shouldn't be denied the right to go on public lands for enjoyment. A hunter walking up a trail to kill an elk isn't damaging the land or taking from it anything that should be compensated for. He predicted future legislative attempts to charge people for use of the state's waters. This is anti-Montanans. A compensation account for sportsmen to use leased land is a good idea. If the committee can't make these things work, then both bills should be scrapped and more time spent to come up with a real compromise.

REP. O'KEEFE said he agreed with REP. FAGG and the departments. Two years ago, there was a bill dealing with the sale of state leased land for cabin sites. He opposed that bill. It passed the Legislature. Some of the most profitable state land was turned loose to the private sector. He agrees with the interpretation of the constitution that it is the Legislature's responsibility to get the highest possible return on school trust lands for education.

There is a real problem in charging Montanans for a right they have always had, but the Legislature has done politically dumb things before and sometimes gets away with it. This is the right thing to do, even if it is politically dumb. He supports REP. FAGG's motion and will support whatever comes out of the committee. If the committee goes REP. COHEN's way, sportsmen may withdraw their suit, but stockmen may replace it. There is a valid point here.

REP. DOLEZAL said he understands the need to take care of leaseholders. There needs to be some way to compensate them. He asked REP. COHEN how the contingency fee would be implemented in his amendment. REP. COHEN said the question is how, under his amendments, the state would compensate leaseholders. People who want to use leased land would be asked to purchase a permit. The money would go into a lessee compensation account, which would be capped. Any additional fee revenue would go into the education trust fund. The Board of Land Commissioners would be asked to keep track of all of it. If more money is coming into the account than is necessary to compensate leaseholders, the board, by rule, could reduce the fee. If very little money is needed, the board could ask the Legislature for a yearly appropriation instead of a fee. The effective date for requiring these permits in either of these bills isn't until March 1, 1992. It would be simple to put

to the voters an amendment to the state constitution to recognize the inalienable right of the people to have access to state land. That could be on the ballot in November. He cannot image Montanans not voting for such a constitutional amendment. By the time the permit requirement becomes effective next March, the state constitutional problem could be addressed.

Motion: CHAIRMAN RANEY MADE A SUBSTITUTE MOTION TO AMEND THE AMENDMENTS OF REP. COHEN, WHICH ARE ACTUALLY REP. BROWN'S AMENDMENTS, TO STRIKE LANGUAGE THAT PROVIDES FOR FEES AND REPLACE IT WITH LANGUAGE THAT PROVIDES FOR \$50,000 TO BE APPROPRIATED FROM THE GENERAL FUND FOR THE DAMAGE COMPENSATION FUND.

REP. REAM said REP. FAGG made three motions. CHAIRMAN RANEY said he accepted only the "Do Pass" motion and the motion to take REP. BROWN's amendments. He made the third motion to amend the amendments. There can't be anymore motions other than to table the bill.

REP. REAM asked CHAIRMAN RANEY if his motion would delete what was proposed in the second amendment. CHAIRMAN RANEY said he wasn't addressing what was on the second sheet. He asked Mr. Sihler to identify the section of amendments he was attempting to amend. Mr. Sihler said he wasn't clear.

CHAIRMAN RANEY asked REP. COHEN if he could clarify what he was saying. REP. COHEN suggested the committee adopt amendments in EXHIBIT 3, then the committee could offer amendments to that and talk about HB 401. If and when the committee wants to discuss HB 778, the committee should initially amend all of this into HB 778. That way everyone has a hard copy of the bill. CHAIRMAN RANEY withdrew his amendment and returned to REP. FAGG's motion to accept REP. BROWN's amendments as requested by REP. COHEN, EXHIBIT 3.

Vote: Motion to amend HB 401 carried, with REP. GILBERT voting no.

Motion/Vote: CHAIRMAN RANEY moved to amend the bill as amended and to strike the language that provides for fees and replace it with a General Fund appropriation of \$50,000 to the Damage Compensation Fund.

Discussion: CHAIRMAN RANEY asked Mr. Sihler where this amendment would go in the bill. Mr. Sihler said Section 11-12 on Page 8 would be struck and a new section would be added to the end of the bill for a \$50,000 appropriation. He asked for the authority to do what is necessary to make it work.

REP. ELLISON told CHAIRMAN RANEY that he effectively negated everything that had been done in the last two weeks and put the state back into court. If the issue goes to court, neither side will win.

REP. COHEN said that while he isn't sure he likes CHAIRMAN RANEY's amendments, he likes them better than HB 401. He was concerned that a portion of the \$5 fee would go toward administrative costs of providing compensation, and none would go to the Department of Fish, Wildlife and Parks, which would be responsible for enforcing the law. After making that statement, REP. COHEN realized the matter was addressed and withdrew his objection.

REP. FAGG said the Department predicts 50,000-60,000 people will buy the \$5 license, which would raise between \$250,000 and \$300,000. If this is to be limited to hunting and fishing, it may be better to put a \$1 fee on the conservation license. About 400,000 conservation licenses are sold to hunters and anglers. That would raise about \$400,000. Either of those two plans are preferable to a General Fund appropriation because the people who would be using the land would be paying for it. He opposed CHAIRMAN RANEY's motion.

CHAIRMAN RANEY said he wouldn't mind withdrawing his motion to go to a conservation license fee.

REP. GILBERT said the committee needs to get back to what was intended and that was to set up a compensation account so that when the public used leased lands, the lessee would be compensated for any damage. He told CHAIRMAN RANEY that his amendment doesn't cover that. He envisioned an optional license for people who want to hunt on public land that is leased to someone else. If the public is going to be allowed on leased lands, some money should go toward paying for damage. It is corrupt and criminal to charge people for going onto every piece of state land.

REP. ELLISON said REP. DOROTHY BRADLEY, HD 79 - Bozeman, in 1975 or 1977 had a bill to use state school trust land for natural uses. The bill failed because the Legislature said that couldn't be done unless school funds are paid for that purpose. There is a long-standing policy that whoever uses school trust land pays market value. Until recently, people could hunt wherever they wanted to. There was no market value to it. The state might as well continue with the existing lawsuit than get into a new one.

CHAIRMAN RANEY said he would be open to new ideas.

MOTION: REP. GILBERT MADE A SUBSTITUTE MOTION TO AMEND THE COMPROMISE HB 401, WHICH HAS SECTION 11 AT THE TOP OF PAGE 8, TO INSERT THE WORD "LEASED" AFTER THE WORD "STATE" ON LINE 4 OF SECTION 11 ON PAGE 8.

Discussion: REP. GILBERT said his motion would take care of the problem that originally existed and gets the committee back to other work. Otherwise, the committee is charging everyone for everything. That wasn't the direction the committee was asked to go in. If there is leased land that a person wants to trespass

on, the person has to pay. If this amendment works, he will propose a compensation fund amendment.

REP. DOLEZAL spoke in favor of REP. GILBERT's motion. He said there should be a distinction between leased land and non-leased land.

REP. REAM asked if CHAIRMAN RANEY's motion was withdrawn. CHAIRMAN RANEY said no. REP. GILBERT's motion is a substitute motion. REP. REAM asked if that replaces his motion. CHAIRMAN RANEY said his motion is gone.

Mr. Sihler said REP. GILBERT's proposed amendment is essentially what REP. COHEN's bill does. Technically, if the committee wants to insert the word "leased," a number of other places may need to be changed as well. In many cases, this is incorporated into REP. COHEN's HB 778.

CHAIRMAN RANEY said that if the committee agrees with REP. GILBERT's motion, the smart thing to do would be to kill HB 401 and take up HB 778. He asked REP. BROWN if that were accurate. REP. BROWN said probably.

CHAIRMAN RANEY said the motion is to charge for access to leased land.

REP. BROWN said those who don't want to charge anything at all can't get away with that. Courts are sensitive to trust issues. They have already shown that they will not be any less sensitive with the education trust. If either of these bills is passed without differential, while he probably can change it on the House floor, the state will be back in court. If the committee wants to kill both bills, then the lawsuit that was delayed because sportsmen liked the compromise, will be won. The court will dictate how state lands are dealt with.

REP. ELLISON said that if the court decides the issue, market value will be charged. That may be what it costs to get onto private lands.

REP. REAM asked REP. BROWN to address the issue of not charging fees at all and separating out leased land from other state land. REP. BROWN said either state funds can be appropriated as compensation for the trust, or the public can be charged a fee. The question is, how much is enough. The new lands management account that helps protect the landowner also must be addressed. Legally, the committee could probably do either one. The question is whether the state can afford one over the other.

CHAIRMAN RANEY asked what would happen if the \$1 fee were put on the conservation license, half the money was appropriated to the school trust and half to the Department, and no one had to have the conservation license to be on state land. REP. BROWN said there is probably no control from the lessee's point of view. The

suggestion is a simple solution, but the effort to provide some protection to leaseholders is lost. This is not a tough issue to get around. The Legislature has to deal with it one way or another, or reject it and let the court settle it. If the matter is handled that way, the problem will not be solved.

CHAIRMAN RANEY said the motion is to amend the bill to have it apply to state leased land.

Vote: Motion to amend the bill carried 9-8. **EXHIBIT 5**

Discussion: **CHAIRMAN RANEY** said the issue before the committee is for fees on leased state lands.

REP. GILBERT said the committee is getting into what **Mr. Sihler** was talking about -- the difference between the two bills. The committee needs to set up the compensation account. Draft language does that in Section 10 on Page 8 of **EXHIBIT 6**.

Motion: **REP. GILBERT** MOVED LANGUAGE IN SECTION 10, PAGE 8, BE INSERTED IN THE PROPER PLACE IN **HB 401**.

Discussion: **CHAIRMAN RANEY** asked if the amendment approved by the committee and the amendment being proposed by **REP. GILBERT** equate to an amended **HB 778**. **REP. COHEN** said that if the committee approves the set of amendments he prepared for **HB 778**, the result would be exactly what **REP. GILBERT** is proposing.

REP. COHEN said it would be easier to table **HB 401** and move the body of amendments to **HB 778**.

REP. BROWN asked if **REP. GILBERT** was referring to language in Subsection 6 (a) and (b). **REP. GILBERT** said yes. **REP. BROWN** said that deals with money collected from fines and how it is split.

REP. GILBERT said there is a solution to the problem.

REP. COHEN said the way to solve the problem is to table **HB 401**, move **HB 778**, and move the body of amendments to **HB 778**. The result would be exactly what **REP. GILBERT** wants -- a bill that only charges a fee to create a compensation account for access to leased lands. A person will have to contribute to that account if using leased lands.

CHAIRMAN RANEY said the committee can table **HB 401** and take up **HB 778**, or pass consideration on **HB 401**.

Motion: **REP. GILBERT** WITHDREW HIS MOTION AND MOVED TO PASS CONSIDERATION ON **HB 401**.

Discussion: **REP. REAM** asked for clarification. **CHAIRMAN RANEY** said that if the committee approves the motion by **REP. GILBERT** to make the fee applicable to leased state land only, then it should take his second motion to provide the compensation fund. The

result would be HB 778.

REP. REAM said he would like to get a legal opinion on whether the committee is heading into constitutional problems. CHAIRMAN RANEY asked Mr. North whether REP. GILBERT's proposed amendments to HB 778 are constitutionally sound. Mr. North said there are two problems. The state would be allowing access for recreational purposes on certain lands without requiring compensation. That creates a grave constitutional problem that he doesn't believe he could overcome in court if sued. Revenues from leasing the lands must go to the school trust. There is some question about whether a portion of it can be diverted for administration. Greg Petesch, the Legislative Council's Attorney, is of the opinion that none can be diverted for any purpose. It must all go to the school trust. Mr. North said he believes some money can be diverted. But the bill is not talking about administration. It talks about compensating the lessee, which is a constitutional problem.

REP. COHEN said the Enabling Act is addressed in HB 778, Page 12, Section 20 of EXHIBIT 6. Presently, no one pays for recreational use of state land. HB 778 would keep track of people going onto these lands. The fee is strictly for compensating people. If the compensation fund builds over time, the money automatically goes into the education trust fund. The Board of Land Commissioners is authorized to adjust the fee. He believes both constitutional questions have been addressed.

Mr. Sihler said the bill includes a \$100,000 cap. Any revenue above \$100,000 goes to the trust. The \$5 fee would sunset in two years. After two years, the level of the fee would be determined by the board, based on the cost of administering the program.

REP. COHEN said the committee would only be requiring people who want to use leased lands to register and pay into the compensation fund.

CHAIRMAN RANEY asked Mr. North if he could provide committee members with a fact sheet on the bill and potential constitutional problems, before the bill gets to the floor, if the committee passes it in the form proposed by REP. GILBERT. Mr. North said yes. He thinks there is a constitutional question of using General Funds to compensate the trust. The Enabling Act says the state is to obtain money for the use of this land. In this bill, General Fund money that usually goes to the School Foundation program would be given to the education trust fund, which goes back to the Foundation program.

CHAIRMAN RANEY said REP. GILBERT's motion would insert compensation language from HB 778 into HB 401. Rather than do that and create a hassle for the bill drafter, the committee could pass consideration on HB 401, take up HB 778, put REP. COHEN's amendments on it, and move onto another issue.

REP. REAM said it may be better to pass consideration on both

bills to allow discussion at the next hearing. CHAIRMAN RANEY said there are more equally difficult issues to solve. The committee must make some hard decisions. There isn't time for other things. He asked committee members to raise their hands if they wanted to come in Saturday after the session to deal with the issue or take up the issue now. Six indicated they wanted to wait. Seven indicated they wanted to take action.

Motion/Vote: REP. GILBERT MOVED TO PASS CONSIDERATION ON HB 401 AND TAKE UP HB 778. Motion carried 12-6, with REPS. HOFFMAN, NELSON, BARNHART, FAGG, ELLISON and TOOLE voting no.

Motion: REP. GILBERT MOVED HB 778 DO PASS.

Motion: REP. GILBERT MOVED TO APPROVE REP. COHEN'S AMENDMENTS TO HB 778. EXHIBIT 6

Discussion: REP. GILBERT said HB 778 does what most of the committee intended to do. No one said anything about constitutional problems until sportsmen of the state decided they should be allowed to hunt on public land. The lawsuit was filed to force DSL to let some people on state land that leaseholders wouldn't let them on. All of a sudden there is a bill to charge everyone in the state for access. People in this state are the ones who support the constitution and told the Legislature how to write it. Anyone who thinks people will stand for paying for access to public lands is crazy. If this committee passes this bill, there will be a constitutional initiative or referendum to change it. It's foolish to even think about it. He suggested the bill be debated on the House floor.

REP. O'KEEFE said he doesn't like the bill. He believes it has constitutional problems. He took an oath to uphold the constitution in form and substance. He will vote to get the bill out of committee and will help REP. BROWN fix it on the House floor.

Vote: Motion to amend HB 778 carried 14-3. EXHIBIT 7

Motion/Vote: REP. GILBERT MOVED HB 778 DO PASS AS AMENDED. Motion carried 14-3, with REPS. ELLISON, FAGG AND HOFFMAN voting no.

EXECUTIVE ACTION ON HB 731

Motion: REP. REAM MOVED HB 731 DO PASS.

Discussion: REP. REAM asked if amendments were made to the bill. CHAIRMAN RANEY said yes. The bill was amended as requested. REP. REAM said the amendments are the result of a lot of hard work by the Montana Logging Association, Janet Ellison and Stan Bradshaw. They make the bill more workable and streamline the enforcement process. It costs much less than indicated on the fiscal note. This is a compromise bill.

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-20-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Page 1 of 14

Mr. Speaker: We, the committee on Natural Resources report that House Bill 778 (first reading copy -- white) do pass as amended.

Signed: Bob Raney, Chairman

And, that such amendments read:

1. Title, line 6.

Following: "OF"

Insert: "LEASED"

Following: "INCLUDES"

Insert: "GENERAL"

2. Title, lines 7 through 9.

Strike: "REQUIRING" on line 7 through "MET;" on line 9

3. Title, lines 10 and 11.

Strike: "OPEN" on line 10 through "EXCEPTIONS" on line 11

Insert: "ADOPT RULES TO AUTHORIZE AND GOVERN THE RECREATIONAL USE
AND CLOSURE OF LEASED STATE LANDS"

4. Title, line 12.

Strike: "WILDLIFE CONSERVATION"

5. Title, line 13.

Following: "THE"

Insert: "GENERAL"

Following: "OF"

Insert: "LEASED"

6. Title, lines 16 and 17.

Strike: "INCREASING" on line 16 through "LICENSES;" on line 17

7. Title, line 17.

Following: "FOR"

Strike: "DISPOSITION"

Insert: "THE STATUTORY APPROPRIATION"

8. Title, line 18.

Following: "PENALTIES;"
Strike: "AND"

Insert: "PROVIDING COMPENSATION FOR DAMAGE TO A LESSEE'S
IMPROVEMENTS, GROWING CROPS, AND LIVESTOCK; PROVIDING AN
APPROPRIATION;"

9. Title, line 18.

Following: "SECTIONS"

Insert: "17-7-502,"

10. Title, line 19.

Following: "19-8-504,"

Insert: "77-1-101,"

11. Title, lines 20 and 21.

Following: "87-1-502,"

Insert: "87-1-504, AND"

Following: "87-1-601,"

Strike: remainder of line 20 through "87-2-204," on line 21

Following: "MCA" on line 21

Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

12. Page 1.

Following: line 23

Strike: the statement of intent in its entirety

Insert:

"A statement of intent is required for this bill because [section 13] requires the board of land commissioners to adopt rules to implement the provisions for general recreational use of leased state lands established by this bill. Consistent with the provisions of this bill, the legislature recognizes the public's right to general recreational use of state lands, and it is the intent of the legislature that public recreational use of state lands be accomplished to the fullest extent possible. It is acknowledged that certain leased state lands will merit closure to public recreational use due to certain considerations, including but not limited to the presence of growing crops and livestock and the proximity of dwellings and agricultural buildings. Nothing in this bill authorizes or purports to authorize trespass on private lands to reach state lands.

This bill requires the board to adopt rules governing the general recreational use of leased state lands. These rules must address the compensation for damage to improvements, criteria for closure, restrictions upon certain recreational activities, and, when requested by any surface lessee, provision for the recreational user to make a reasonable effort to provide prior notice of the type and extent of the recreational use

contemplated.

[Section 18] authorizes the board to adopt rules for weed control activities. It is the intent of the legislature that the board establish a procedure whereby weed infestations on leased state lands that are attributable to recreational access are controlled or eradicated. Examples of procedures that fulfill this intent include:

- (1) a departmental weed control program;
- (2) payments for weed control activities; and
- (3) payments to county weed boards.

It is the intent of the legislature that the board evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise through the course of rulemaking and implementation, and report its findings and recommendations to the 53rd legislature."

13. Page 2.

Following: line 18

Strike: everything after the enacting clause

Insert: "Section 1. Section 19-8-504, MCA, is amended to read:

"19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or moneys distributed under 3-10-601(4), all such collections are statutorily appropriated to the account until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 2. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title the following definitions apply:

- (1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.
- (2) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.
- (3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

- (4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any

investments purchased under the provisions of 17-6-211.

(5) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(6) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, nature study, photography, bird watching, waterskiing, horseback riding, winter sports, viewing or enjoying historical or scenic sites, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(7) "Legally accessible state lands" means state lands that can be accessed by public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission."

(8) "Leased state lands" means state lands that have been leased for agricultural, grazing, timber, or other purposes.

Section 3. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties of the board in subsection (1) that the people of this state are entitled to general recreational use of state lands.

~~(2)~~ (3) When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser."

Section 4. Section 77-1-203, MCA, is amended to read:

"77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept

defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) Multiple-use management of state lands, including those lands that are leased primarily for other purposes, includes general recreational use as defined in 77-1-101. General recreational use is limited to legally accessible state lands, as defined in 77-1-101, that have not been closed to some or all recreational uses in accordance with rules promulgated under [section 13].

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for general recreational purposes without the advanced written permission of the department.

Section 5. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

Section 6. Section 77-1-402, MCA, is amended to read:

"77-1-402. Basis for classification or reclassification.

(1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers

and duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs."

Section 7. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and the privilege to hunt, fish, or trap within this state or to use leased state lands for general recreational purposes for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than \$500 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than \$300 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than \$200 or more than \$600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than \$50 or more than

\$200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than \$500 or more than \$1,000.

(3) A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later.

(4) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 8. Section 87-1-502, MCA, is amended to read:

"87-1-502. Qualifications, powers, and duties. (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish and that those persons who make recreational use of leased state lands for hunting and fishing, have the necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a

monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection."

Section 9. Section 87-1-504, MCA, is amended to read:

"87-1-504. Protection of private property -- duty of wardens as ex officio firewardens. (1) It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2), [section 11], [section 15], and rules adopted under [section 13] on private and leased state lands being used for the recreational purposes of hunting and fishing and to act as ex officio firewardens as provided by 77-5-104.

(2) As used in this section, "recreational purposes" means recreational purposes as defined in 70-16-301."

Section 10. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game money. (1) All Except as provided in subsection (6), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) All Except as provided in subsection (6), all money collected or received from fines and forfeited bonds, except

money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department ~~of fish, wildlife, and parks~~ in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation.

(6) Money collected or received from fines or forfeited bonds for the violation of [section 11], [section 15], or rules adopted under [section 13] must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of [section 11], [section 15], and rules adopted under [section 13]; and

(b) 50% in the state lands lessee compensation account established by [section 16] for use by the department of state lands in compensating lessees of state land for damages to improvements, growing crops, or livestock that result from general recreational use.

NEW SECTION. Section 11. License required for general recreational use of leased state lands -- penalty.

(1) A person 12 years of age or older shall obtain an annual license pursuant to [section 12] to use leased state lands for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection his recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both.

NEW SECTION. Section 12. License fee. (1) Until March 1,

1993, the fee for a license for the general recreational use of leased state lands is \$5, and thereafter the amount of the fee must be determined by the board based upon the cost of administering the state lands lessee compensation account provided for in [section 16].

(2) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of licenses required under [section 11] through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9.

NEW SECTION. Section 13. Board to prescribe rules for general recreational use of leased state lands. (1) The board shall adopt rules authorizing and governing the general recreational use of leased state lands allowed under 77-1-203.

(2) Rules adopted under this section must address the circumstances under which the board may close leased state lands to general recreational use. Such action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. Leased state lands may be closed by the board only after public notice and opportunity for public hearing, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may categorically close leased state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on leased state lands due to:

- (a) cabinsite and homesite leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.

(4) The board shall adopt rules providing an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of leased state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, leased state lands may be closed on a case-by-case basis for certain reasons, including but not limited to:

- (a) damage attributable to recreational use that diminishes the income-generating potential of leased state lands;
- (b) repeated damage to surface improvements of the lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;
- (d) the presence of unique or special natural or cultural features;

- (e) wildlife protection;
 - (f) noxious weed control; or
 - (g) the presence of buildings, structures, and facilities.
- (6) Rules adopted under this section may impose

restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on leased state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on leased state lands is restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a special use license for commercial or concentrated general recreational use of leased state lands. Commercial or concentrated general recreational use must be prohibited on leased state lands unless it occurs under the provisions of a special use license.

(8) For a violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in [section 10(6)].

NEW SECTION. Section 14. Liability of state and lessee.

(1) The provisions of 70-16-302 that limit the liability of a landowner or his tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of, or damages resulting from, a fire on his leased land caused by a general recreational user, except that a lessee that observes a fire caused by a general recreational user shall make reasonable efforts to suppress the fire or report it to the proper fire fighting authority.

NEW SECTION. Section 15. Prior notification to lessee of recreational use -- trespass -- penalty. (1) If a lessee of state lands under [sections 11 through 18] desires to be notified prior to anyone entering upon his leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or his agent's name, address, and telephone number. When leased state land is posted, recreational users shall make a reasonable effort to contact and identify themselves to the lessee or his agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) When property is posted in accordance with subsection (1) and adjacent private property is owned by the lessee of state lands, each recreational user must have obtained permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry without permission is an absolute liability offense punishable as a misdemeanor. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

NEW SECTION. Section 16. State lands lessee compensation account. (1) There is a state lands lessee compensation account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the license established by [section 12];

(b) all revenue received from the imposition of fines under [sections 11 and 15] and from civil penalties imposed pursuant to [section 13]; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the account is statutorily appropriated, as provided in 17-7-502, and must be used by the department for the following purposes:

(a) compensation for damage to the improvements, growing crops, or livestock of a state land lessee, which has been proved to be caused by recreational users pursuant to [section 17]; and

(b) assistance in weed control management necessary as a result of general recreational use of leased state lands.

(4) A maximum of \$100,000 may be deposited into the account. Additional revenue must be apportioned on a pro rata basis to the land trusts in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

NEW SECTION. Section 17. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to or replacement of improvements, growing crops, or livestock damaged by recreational users of leased state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair or replacement costs. Upon review of the application and supporting proof and upon additional investigation as required, the department shall either grant,

modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from the state lands lessee compensation account established by [section 16], and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

NEW SECTION. Section 18. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of leased state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from the state lands lessee compensation account pursuant to [section 16].

Section 19. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985; and [section 16].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that

have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

NEW SECTION. Section 20. Appropriation. There is appropriated from the general fund to the land trusts \$20,000 for fiscal year 1992 and \$20,000 for fiscal year 1993. The purpose of the appropriation is to compensate the land trusts for general recreational use of state lands. The appropriation must be apportioned on a pro rata basis to the land trusts in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts.

NEW SECTION. Section 21. Codification instruction. [Sections 11 through 18] are intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [sections 11 through 18].

NEW SECTION. Section 22. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 23. Applicability. Upon passage and approval of [this act], the board of land commissioners may commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks may commence proceedings and arrangements necessary to establish a license required under [section 11], to be effective March 1, 1992.

NEW SECTION. Section 24. Effective date. [This act] is effective March 1, 1992."

-END-

CLERICAL

Bill No. 778

3/22/91



S / H

Natural Resources
Standing Committee

(Chairman)

Raney

9:30



S / H

Committee of the Whole

BA

lative Council Staff

(Sponsor)

accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

amendment #13 should read:

Insert:

(in section 2)

(1) "Legally . . . permission."

1

delete quotes

(in section 8.)

(3) . . . for hunting and fishing, have . . .

show comma as added

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

EXHIBIT 7
DATE 3-20-91
778

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 778 NUMBER 1

MOTION: To amend HB 778

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓	
REP. BOB GILBERT	✓	
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM	✓	
REP. TOM NELSON	✓	
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART	✓	
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER	✓	
REP. DAVID HOFFMAN		✓
REP. DICK KNOX <i>declined to vote</i>		
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	14	3

EXHIBIT 3
DATE 3-20-9
HB 401

Amendments to House Bill No. 401
First Reading Copy

Requested by Rep. Cohen
For the Committee on Natural Resources

Prepared by Paul Sihler
March 18, 1991

1. Title, line 5.

Strike: "AUTHORIZING"

Insert: "PROVIDING THAT ALLOWABLE USE OF STATE LANDS INCLUDES
GENERAL RECREATIONAL USE BY THE PUBLIC; REQUIRING"

2. Title, lines 6 through 10.

Strike: "IMPLEMENT" on line 6 through "AND" on line 10

Insert: "ADOPT RULES AUTHORIZING AND GOVERNING THE GENERAL
RECREATIONAL USE OF STATE LANDS; REQUIRING PURCHASE AND
POSSESSION OF A RECREATIONAL USE LICENSE BY PERSONS 12 YEARS
OF AGE OR OLDER FOR THE GENERAL RECREATIONAL USE OF STATE
LANDS; PROVIDING FOR ENFORCEMENT OF THE LICENSE REQUIREMENT
BY THE WARDENS OF THE DEPARTMENT OF FISH, WILDLIFE, AND
PARKS; PROVIDING PENALTIES; PROVIDING FOR THE STATUTORY
APPROPRIATION OF LICENSE FEES AND PENALTIES; PROVIDING
COMPENSATION FOR DAMAGE TO IMPROVEMENTS, GROWING CROPS, AND
LIVESTOCK;"

3. Title, lines 10 and 11.

Strike: "17-3-1003" on line 10 through the remainder of the title

Insert: "17-7-502, 19-8-504, 77-1-101, 77-1-202, 77-1-203, 77-1-
204, 77-1-402, 87-1-102, 87-1-502, 87-1-504, and 87-1-601,
MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

4. Page 1.

Following: line 13

Strike: the statement of intent in its entirety

Insert:

"A statement of intent is required for this bill because
[section 13] requires the board of land commissioners to adopt
rules to implement the provisions for recreational use of state
lands established by this bill. Consistent with the provisions
of this bill, it is intended that public recreational use of
state lands be accomplished to the fullest extent possible. It
is acknowledged that certain state lands will merit closure from
public recreational use due to certain considerations, including
but not limited to the presence of growing crops and livestock
and the proximity of dwellings and agricultural buildings.
Nothing in this bill authorizes or purports to authorize trespass
on private lands to reach state lands.

This bill requires the board to adopt rules governing the
actions of the recreational user of state lands. These rules
must address protection of the resource value, compensation for
damage to improvements, criteria for closure, restrictions upon

certain recreational activities, and, when requested by any surface lessee, provision for the recreational user to make a reasonable effort to provide prior notice of the type and extent of the recreational use contemplated.

[Section 18] authorizes the board to adopt rules for weed control activities. It is the intent of the legislature that the board establish a procedure whereby weed infestations on state lands that are attributable to recreational access are controlled or eradicated. Examples of procedures that fulfill this intent include:

- (1) a departmental weed control program;
- (2) payments for weed control activities; and
- (3) payments to county weed boards.

It is the intent of the legislature that the board evaluate the implementation of this bill, develop recommendations to address problems, if any, that arise through the course of rulemaking and implementation, and report its findings and recommendations to the 53rd legislature."

5. Page 3.

Following: line 5

Strike: everything after the enacting clause

Insert: "Section 1. Section 19-8-504, MCA, is amended to read:

"19-8-504. State's contribution. Each month the state treasurer shall pay to the account, out of the department of fish, wildlife, and parks moneys, a sum equal to 7.15% of the total of all members' salaries, and out of the moneys collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or moneys distributed under 3-10-601(4), all such collections are statutorily appropriated to the account until the unfunded liability in the account is solvent and a verification statement to that effect is given to the state treasurer by the board."

Section 2. Section 77-1-101, MCA, is amended to read:

"77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title the following definitions apply:

- (1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.
- (2) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.
- (3) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.
- (4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent; lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution; or lands acquired through foreclosure of any investments purchased under the provisions of 17-6-211.

(5) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated,

whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(6) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, nature study, photography, bird watching, waterskiing, horseback riding, winter sports, viewing or enjoying historical or scenic sites, and other activities determined by the board to be compatible with the use of state lands. General recreational use does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(7) "Legally accessible state lands" means state lands that can be accessed by public road, right-of-way, or easement; by public waters; by adjacent federal, state, county, or municipal land if the land is open to public use; or by adjacent private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public other than those granted permission."

Section 3. Section 77-1-202, MCA, is amended to read:

"77-1-202. Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

(2) It is consistent with the powers and duties of the board in subsection (1) that the people are entitled to general recreational use of state lands to the extent that the trusts are compensated for the value of the recreation.

~~(2)~~(3) When acquiring land for the state, the board shall determine the value thereof after an appraisal by a qualified land appraiser."

Section 4. Section 77-1-203, MCA, is amended to read:

"77-1-203. Multiple-use management. (1) The board shall manage state lands under the multiple-use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various

resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple-use values.

(3) Multiple-use management of state lands, including those lands that are leased primarily for other purposes, includes general recreational use as defined in 77-1-101. General recreational use is limited to legally accessible state lands, as defined in 77-1-101, that have not been closed to some or all recreational uses in accordance with rules promulgated under [section 13].

(4) The department shall include in all new or renewal leases and licenses a provision that leased lands may not be closed at any time to the public for general recreational purposes without the advanced written permission of the department."

Section 5. Section 77-1-204, MCA, is amended to read:

"77-1-204. Power to sell, lease, or exchange certain state lands. (1) The board is authorized to lease state lands for uses other than agriculture, grazing, timber harvest, or mineral production under such terms and conditions which best meet the duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. The lease period for such leases, except for power and school site leases, may not be for longer than 40 years.

(2) The board shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of 77-1-214 when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks. Said sale, lease, or exchange shall not be contrary to the terms of any contract which it has entered into."

Section 6. Section 77-1-402, MCA, is amended to read:

"77-1-402. Basis for classification or reclassification.

(1) The classification or reclassification shall be so made as to place state land in the class which best accomplishes the powers and duties of the board as specified in 77-1-202 and 77-1-203~~(1)~~. When state lands are classified or reclassified in accordance with these duties and responsibilities, special attention shall be paid to the capability of the land to support an actual or proposed land use authorized by each classification.

(2) It is the duty of the department to classify or reclassify state lands so that no state land will be sold, leased, or used under a different classification from that to which it actually belongs."

Section 7. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person violating any provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not

more than 6 months, or both. In addition, the person shall be subject to forfeiture of his license and the privilege to hunt, fish, or trap within this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of not less than 24 months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than \$500 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals or wasting a deer, antelope, or elk shall be fined not less than \$300 or more than \$1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than \$200 or more than \$600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, or fish or any part of any such bird or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than \$50 or more than \$200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of purposely or knowingly taking, killing, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined not less than \$50 or more than \$1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current license and the privilege to hunt, fish, or trap for not less than 24 months from the date of conviction and any pelts possessed unlawfully must be confiscated.

(f) A person convicted of hunting, fishing, or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined not less than \$500 or more than \$1,000.

(3) A person convicted or who has forfeited bond or bail under subsection (2) and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges,

whichever is later.

(4) Notwithstanding the provision of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2."

Section 8. Section 87-1-502, MCA, is amended to read:

"87-1-502. **Qualifications, powers, and duties.** (1) Wardens shall be qualified by their experience, training, and skill in protection, conservation, and propagation of wildlife, game, fur-bearing animals, fish, and game birds and interested in this work. They shall devote all of their time for which they are appointed to their official duties.

(2) They shall enforce the laws of this state and the rules of the department with reference to the protection, preservation, and propagation of game and fur-bearing animals, fish, and game birds.

(3) They shall see that persons who hunt, fish, or take game or fur-bearing animals, game birds, or fish and that those persons who make recreational use of state lands, as defined in 77-1-101, for hunting and fishing, have the necessary licenses.

(4) They shall assist in the protection, conservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds and assist in the planting, distributing, feeding, and care of fish, game, fur-bearing animals, and game and nongame birds. They shall, when ordered by the department, assist in the destruction of predatory animals, birds, and rodents. They shall perform all other duties prescribed by the department and make a monthly report to the department correctly informing the department of their activities on each day of the preceding month with regard to the enforcement of the fish and game laws, showing where their duties called them and what they did. The reports shall contain any pertinent recommendations the wardens may see fit to make.

(5) A warden may not compromise or settle violations of fish and game laws out of court.

(6) A warden has the authority to inspect any and all fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals at reasonable times and at any location other than a residence or dwelling. Upon request therefor, all persons having in their possession any fish, game and nongame birds, waterfowl, game animals, and fur-bearing animals shall exhibit the same and all thereof to the warden for such inspection."

Section 9. Section 87-1-504, MCA, is amended to read:

"87-1-504. **Protection of private property -- duty of wardens as ex officio firewardens.** (1) It shall be the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, and 75-10-212(2), [section 11], [section 15], and rules adopted under [section 13] on private and state lands being used for the recreational purposes of hunting and fishing and to act as ex officio firewardens as provided by 77-5-104.

(2) As used in this section, "recreational purposes" means recreational purposes as defined in 70-16-301."

Section 10. Section 87-1-601, MCA, is amended to read:

"87-1-601. **Use of fish and game money.** (1) All Except as

provided in subsection (6), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the state special revenue fund to the credit of the department. Any money received from federal sources shall be deposited in the federal special revenue fund to the credit of the department.

(2) That money shall be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. That money shall be spent for those purposes by the department, subject to / appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) All Except as provided in subsection (6), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition shall be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived therefrom, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department, and only upon appropriation by the legislature. If the use of money as set forth herein would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in such violation.

(6) Money collected or received from fines or forfeited bonds for the violation of [section 11], [section 15], or rules adopted under [section 13] must be deposited as follows:

(a) 50% in an account for use by the department for the enforcement of [section 11], [section 15], and rules adopted under [section 13]; and

(b) 50% in the state lands recreational use account established by [section 16] for use by the department of state lands in the management of state lands."

NEW SECTION. Section 11. Recreational use license required to use state lands for general recreational purposes -- penalty.

(1) A person 12 years of age or older shall obtain an annual recreational use license pursuant to [section 12] to use state lands, as defined in 77-1-101, for general recreational purposes.

(2) A person shall, upon the request of a peace officer or fish and game warden, present for inspection his recreational use license.

(3) A violator of subsection (1) or (2) is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both.

NEW SECTION. Section 12. Recreational use license -- fee.

(1) The fee for a recreational use license is \$5. The fee is based upon:

(a) a \$3 charge as the value of 1 year of recreational use of state lands; and

(b) a \$2 surcharge for the administrative costs of providing recreational access to state lands and the maintenance of a state lands recreational use account pursuant to [section 16].

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) proceeds collected under subsection (1)(a) must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts; and

(b) proceeds collected under the surcharge of subsection (1)(b), less 50 cents for each license to be returned as a commission to license dealers, must be deposited in the state lands recreational use account established by [section 16] for use by the department in the management of state lands open to general recreational use.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9.

NEW SECTION. Section 13. Board to prescribe rules for recreational use of state lands. (1) The board shall adopt rules authorizing and governing the recreational use of state lands allowed under 77-1-203.

(2) Rules adopted under this section must address the circumstances under which the board may close legally accessible state lands to recreational use. Such action by the board may be taken upon its own initiative or upon petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency, seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and opportunity for public hearing, except when the department is acting under rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary access points with signs provided or authorized by the department.

(3) Closure rules adopted pursuant to subsection (2) may

categorically close state lands whose use or status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due to:

- (a) cabinsite and homesite leases and licenses;
- (b) the seasonal presence of growing crops; and
- (c) active military, commercial, or mineral leases.

(4) The board shall adopt rules providing an opportunity for any individual, organization, or governmental agency to petition the board for purposes of excluding a specified portion of state land from a categorical closure that has been imposed under subsection (3).

(5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for reasons, including but not limited to:

- (a) damage attributable to recreational use that diminishes the income-generating potential of the state lands;
- (b) repeated damage to surface improvements of the lessee;
- (c) the presence of threatened, endangered, or sensitive species or plant communities;
- (d) the presence of unique or special natural or cultural features;
- (e) wildlife protection;
- (f) noxious weed control; or
- (g) the presence of buildings, structures, and facilities.

(6) Rules adopted under this section may impose restrictions upon general recreational activities, including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock. The board may also by rule restrict access on state lands in accordance with a block management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by recreationists on state lands is restricted to federal, state, and county roads and those roads and trails designated by the department to be open to motorized vehicle use.

(7) The board shall adopt rules providing for the issuance of a recreational special use license. Commercial or concentrated recreational use, as defined in 77-1-101, must be prohibited on state lands unless it occurs under the provisions of a recreational special use license.

(8) For the violation of rules adopted by the board pursuant to this section, the department may assess a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection must be deposited as provided in [section 10(6)].

NEW SECTION. Section 14. Liability of state and lessee.

(1) The provisions of 70-16-302 that limit the liability of a landowner or his tenant for the recreational use of property apply to the state and any lessee of state lands used for general recreational purposes.

(2) The lessee is not responsible for the suppression of, or damages resulting from, a fire on his leased land caused by a general recreational user, except that a lessee that observes a fire caused by a general recreational user shall make reasonable

efforts to suppress the fire or report it to the proper fire fighting authority.

NEW SECTION. Section 15. Prior notification to lessee of recreational use -- trespass -- penalty. (1) If a lessee of state lands under [sections 11 through 18] desires to be notified prior to anyone entering upon his leasehold, the lessee shall post, at customary access points, signs provided or authorized by the department. The signs must set forth the lessee's or his agent's name, address, and telephone number. When state land is posted, recreational users shall make a reasonable effort to contact and identify themselves to the lessee or his agent for the purposes of minimizing impact upon the leasehold interest and learning the specific boundaries of adjacent unfenced private property.

(2) When property is posted in accordance with subsection (1) and adjacent private property is owned by the lessee of state lands, each recreational user of state lands must have obtained permission of the lessee or his agent before entering the adjacent private property owned by the lessee. Entry without permission is an absolute liability offense punishable as a misdemeanor. A violator of this subsection is guilty of a misdemeanor and shall be fined not less than \$50 or more than \$500, imprisoned in the county jail for not more than 6 months, or both.

(3) A person may be found guilty of the offense described in subsection (2) regardless of the absence of fencing or failure to post a notice in accordance with 45-6-201.

NEW SECTION. Section 16. State lands recreational use account. (1) There is a state lands recreational use account in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue received from the recreational use license established by [section 12];

(b) all revenue received from the imposition of fines under [sections 11 and 15] and from civil penalties imposed pursuant to [section 13]; and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money deposited in the state lands recreational use account is statutorily appropriated, as provided in 17-7-502, and must be used by the department for the following purposes:

(a) compensation for damage to the improvements of leases that has been proven to be caused by recreational users pursuant to [section 17];

(b) assistance in weed control management necessary as a result of recreational use of state lands;

(c) protection of the resource value of the trust assets; and

(d) administration and management for the implementation of recreational use of state lands.

NEW SECTION. Section 17. Compensation for damage to improvements, growing crops, or livestock. A lessee may apply to the department for reimbursement of documented costs of repair to

securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3), pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991.)"

NEW SECTION. Section 20. Codification instruction. [Sections 11 through 18] are intended to be codified as an integral part of Title 77, and the provisions of Title 77 apply to [sections 11 through 18].

NEW SECTION. Section 21. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 22. Applicability. Upon passage and approval of [this act], the board of land commissioners may commence proceedings to adopt rules to be effective March 1, 1992. The department of state lands and the department of fish, wildlife, and parks may commence proceedings and arrangements necessary to establish a recreational use license to be effective March 1, 1992.

NEW SECTION. Section 23. Effective date. [This act] is effective March 1, 1992."

-END-

or replacement of improvements, growing crops, or livestock damaged by recreational users of state lands. The application must include an affidavit by the applicant setting forth the nature of the loss, allegations and reasonable proof supporting the involvement of recreational users, and documentation of repair costs. Upon review of the application, supporting proof, and additional investigation as required, the department shall either grant, modify, or deny the claim. The department, by reason of payment to the lessee for damage to improvements, is entitled to be subrogated to the rights of the lessee to recover the amount paid from the party causing the damage. Payments under this section must be made from the state lands recreational use account established by [section 16], and the liability of the department for damage payments is limited to the existing balance of the account. Claim applications are to be considered in the order they are received.

NEW SECTION. Section 18. Weed control management. (1) The department shall establish a weed control management program for the control of noxious weeds reasonably proved to be caused by the recreational use of state lands. The department may by rule establish a noxious weed management program that may include direct compensation for noxious weed control activities or participation in district and county weed control projects or department-initiated weed control activities.

(2) Funding for this program must come from the state lands recreational use account pursuant to [section 16].

Section 19. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111; 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016; 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101; 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136; 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306; and section 13, House Bill No. 861, Laws of 1985; and [section 16].

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and

Amendments to HB
(Recreation Access Bill) ..

EXHIBIT 4

DATE 3-20-91

HB 401

1. Amend Draft Copy Page ³~~3~~, section ~~6~~ (6), line 2,

Following: "fishing"

Strike: "swimming, boating, rafting tubing, camping, picnicking, hiking, nature study, photography, bird watching, waterskiing,, horseback riding, winter sports, viewing or enjoying historical or scenic sites,"

2. Amend Draft Copy Page 15, section 12,

Following subsection: (3)

Insert: "(4) The board may establish fees for a recreational use license for activities not specifically listed in [Section 2 (6)] at an amount not to exceed \$10. The fee shall be based upon the recreational value of the use and the amount of administrative costs associated with the activity.

EXHIBIT 5
DATE 3-20-91
HB 401

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. 401 NUMBER 1

MOTION: REP. GILBERT MADE A SUBSTITUTE MOTION TO AMEND THE
COMPROMISE HB401 TO INSERT THE WORD "LEASED" AFTER THE
WORD "STATE" ON LINE 4 OF SECTION 11 ON PAGE 8.

NAME	AYE	NO
REP. MARK O'KEEFE, VICE-CHAIRMAN		✓
REP. BOB GILBERT	✓	
REP. BEN COHEN	✓	
REP. ORVAL ELLISON		✓
REP. BOB REAM		✓
REP. TOM NELSON		✓
REP. VIVIAN BROOKE	✓	
REP. BEVERLY BARNHART		✓
REP. ED DOLEZAL	✓	
REP. RUSSELL FAGG		✓
REP. MIKE FOSTER <i>declined to vote</i>		
REP. DAVID HOFFMAN		✓
REP. DICK KNOX		✓
REP. BRUCE MEASURE	✓	
REP. JIM SOUTHWORTH	✓	
REP. HOWARD TOOLE	✓	
REP. DAVE WANZENRIED	✓	
REP. BOB RANEY, CHAIRMAN	✓	
TOTAL	9	8

Senator Halligan asked why this is not addressed after temporary investigating authority instead of waiting until it is adjudicated and the child has been in foster care for a year. He asked if this language could be clarified. Ann Gilkey replied she would look at changing the language.

Closing by Sponsor:

Representative Zook made no closing comments. Senator Pinsonneault offered to carry the bill, if it passes out of the Committee.

HEARING ON HOUSE BILL 778

Presentation and Opening Statement by Sponsor:

Representative Dave Brown, District 72, said HB 778 is a land access compromise bill, and was worked on by the Attorney General, the Secretary of State, and others. He said these people spent many hours with all concerned parties, and that he believes it is a good package. Representative Brown stated that it is a fragile compromise, but is a step forward.

Proponents' Testimony:

Attorney General Marc Racicot, asked for favorable consideration of the bill which, he said, resolves the insurmountable problem that cannot be dealt with by litigation (Exhibit #7 - Attorney General and Secretary of State).

Mike Cooney, Secretary of State, and member of the State Lands Board, said this was the most important issue to people during his 1988 campaign. He said he believes HB 778 is a step in the right direction, and is a very valuable compromise.

John Gibson, Billings Rod and Gun Club and Magic City Trout Unlimited, said he has worked in the Custer National Forest for the past 15 years where there have been thousands of land improvements, but insignificant damage as a result of year-round use. He said he believes the damage issue is overstated, and has little substance (Exhibit #8).

Bill Haldorf, Skyline Sportsmen, Butte, said he wanted to address the spread of noxious weeds by other than sportsmen (Exhibit #9).

Paul Berg, Legislative Chairman, Southeast Montana Sportsmen Association, said he represented about 5,000 sportsmen, and asked the Committee to support the bill (Exhibit #10).

Robert Dupea, White Sulphur Springs, said he represented the Stockgrowers Private Lands Committee, and asked the Committee to support the bill without amendment (Exhibit #11).

Lorna Frank, Montana Farm Bureau, asked the Committee to support the bill as it is now (Exhibit #12).

Ed Lord, Phillipsburg rancher, representing the Montana Stockgrowers, asked the Committee to support HB 778 (Exhibit #13).

Knute Hereim, Martinsdale rancher, asked the Committee to support the bill (Exhibit #14).

Ron Stevens, President, Public Lands Access Association, said he represents 835 members and 6,000 affiliated members (Exhibit #15).

Jack Jones, Skyline Sportsmen's Association, stated his support of the bill and thanked those who worked on it.

Ron Mosher, Augusta rancher, and Montana Stockgrowers Association, stated his support of the bill (Exhibit #16).

Carol Mosier, Montana Cattlemen and Wool Growers thanked Representative Dave Brown for his work on the bill, and asked the Committee to support it.

Kay Norenberg, Women In Farm Economics (WIFE), stated her support of the bill.

Jim McDermond, Great Falls, commented that it was great to see agriculture and sportsmen working together (Exhibit #17).

Alan Rollo, Great Falls, said he represented himself, and asked the Committee to support the bill (Exhibit #18).

Bob Bugm, Prickly Pear Sportsmen, said he represented 400 members, and asked the Committee to support the bill. He provided Legislative Auditor information for the Committee to review (Exhibit #19).

Tony Schoonen, State Lands Coalition, provided information from the State of Wyoming, and asked the Committee to support the bill (Exhibit #20).

Tom Loftsgaard, Land Management Council, stated his support of the bill with the exception of Section 17, line 4. He said there is a chance that a catastrophic situation could occur if a fire set by a recreational user damaged or destroyed farm buildings or machinery (Exhibit #21).

Bob Fouhy, Land Management Council, stated his support of the bill (Exhibit #22).

Joe Gutkoski, Gallatin Wildlife Association, said the Association has been working on this issue for 18 years, and that he believes there will be little or no damage.

Linda Ellison, Land Use Coordinator for the Montana Trail Riders Association, said her concerns were addressed in her written testimony (Exhibit #23).

Laurie Thomas, Anaconda, provided news clippings for Committee review, and asked them to support HB 778 (Exhibit #24).

Representative Ed Grady, District 47, said he wished he had seen the same cooperation in the stream access bill. He stated that if this situation is not resolved, it will end up costing hundreds of thousands of dollars in the court. Representative Grady further stated that landowners will have to make tough votes, just as he did in the House. He said the biggest opposition is to the \$5 fee for land use as the bill affects 5 million acres in Montana.

Opponents' Testimony:

Representative Bob Raney, District 82, said he finds the \$5 access fee to state lands appalling. He told the Committee he believes Montanans live here because of recreation and freedom, and that he believes this bill takes that away. He asked if state water would follow, and said he doesn't believe anyone has the right to charge people to use state lands. Representative Raney advised the Committee that he does believe people should pay lessees for damage caused.

Representative Raney said he did not believe in this compromise, that sportsmen are already accustomed to paying for hunting and fishing. He asked if families with kids, berry pickers, and cross country skiers would have to pay these fees, and said the process can't be turned back once it is started. Representative Raney further stated that he was appalled that the Board of State Lands would go for this, and asked the Committee to look at the bill. He said this issue was not covered by the press, and that people don't know about it.

Questions From Committee Members:

Senator Svrcek asked if other agricultural users of state lands would be treated the same way in terms of weed infestation. Representative Brown replied they would be.

Senator Doherty asked how the \$300,000 would be spent. Representative Brown replied the answers are not ready yet, but some of the funds would be used to jump-start this legislation.

Senator Doherty asked what would be studied with these funds. Representative Brown replied all uses would be studied.

Senator Doherty asked Secretary of State Mike Cooney if all uses would be studied. Mr. Cooney replied he would need to see how much money there would be for study, and said he would rate economic analysis of values first. He stated he would also like to

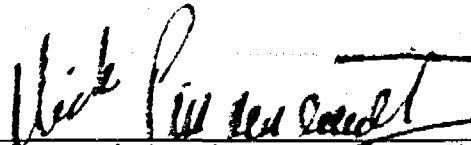
do an environmental impact study to cover all uses, and that this would be a major undertaking.

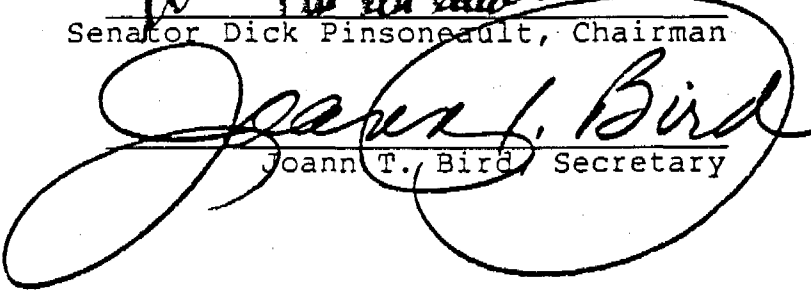
Closing by Sponsor:

Representative Brown offered to be present to answer questions during executive action on the bill, since time was limited this date.

ADJOURNMENT

Adjournment At: 12:40 p.m.


Senator Dick Pinsonneault, Chairman


Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1998

Date 10 April

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

EXF7
10 April
HB 778

GUEST EDITORIAL OF
MIKE COONEY AND MARC RACICOT

As two members of the State Land Board, we want to ask the people of Montana for their endorsement of a legislative solution to a difficult problem facing the management of state lands -- recreational access. House Bill 778 is currently before the Montana Senate, having passed the House on April 4, 1991. We encourage your support because the bill represents a fair compromise between the sometimes competing interests of state lessees and hunters and fishermen.

In 1988 a lawsuit was initiated by a coalition of sportsmen who demanded that the State Land Board provide public access to all state lands. The trial of that lawsuit was postponed by the Court this winter in hopes that the Legislature would come up with an acceptable solution. Nearly everyone is in agreement that a court decision will not provide the best solution to the conflict because a court cannot address all of the public policy issues involved in providing a lasting solution to this difficult problem. While everyone agrees it is not in the best interest of all concerned to have the court decide this matter, historically there has been little consensus over how to resolve the issues.

Much of the controversy surrounding state lands lies in a philosophical disagreement over who owns and controls these lands and for what purposes. Historically, people who have leased state lands have held exclusive rights to use the land. While lessees have been given certain management responsibilities, including fencing, weed control and fire suppression, it is important to recognize that school trust lands are meant to benefit all the people of Montana.

State lands were designated for a special purpose which sets them apart from other types of public lands. When the federal government established the state of Montana it anticipated a need for those services, such as schools, which would be necessary for the growth and development of our state. Instead of directly funding needed services, the United States Government gave up certain lands that would generate income for the new state. The federal government granted land to be held in trust, primarily for public education, and Article X of our 1972 Montana Constitution reflects this trust concept. While there is wide latitude in how state lands are managed and used, it is clear that the state public lands differ from federal public lands in that state lands must generate income for public schools while federal lands may be used to benefit the public generally. To the extent that state lands are capable of making money to support the schools, it is incumbent upon the State Land Board to see that the income earned is channeled to the proper trusts.

In an attempt to find a legislative solution that everyone could live with, for the past several months we have worked with Commissioner of State Lands Dennis Casey, Representative Dave Brown, the sportsmen organized to seek public access, and the various organizations representing the agricultural and ranching interests of our state. Testimony from the numerous public hearings on access held throughout the state last summer was reviewed and considered. The goal was to develop a compromise bill that addressed the concerns of all those people involved with the issue.

HB 778, or "the compromise bill," as it has become known, represents the result of our efforts. As with any true settlement between polarized groups, not every individual hunter and rancher in our state will be satisfied with the result. Yet the bill has been endorsed by both the access coalition that brought the 1988 lawsuit and the ranching and agricultural groups who have been involved in addressing expanded recreational access. HB 778 starts with the general concept that all state lands are open and accessible for recreational purposes unless closed by the State Land Board. Recreational purposes are defined as hunting, fishing and other activities designated by the Board. Access to state lands surrounded by private property is not provided by the compromise bill, although a private landowner may grant permission to cross his land to access a state section. This contrasts with the present policy which provides that lands are open or closed at the discretion of the lessee.

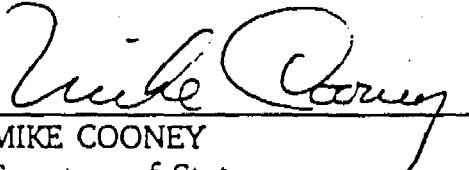
HB 778 assumes that recreational use of state lands carries a value which requires compensation to the school trust, as required in the Montana Constitution. All persons desiring access to state lands for hunting and fishing would be required to purchase a permit. The permit would cost five dollars, with three dollars going to the various school trusts and two dollars going to cover administrative costs and a damage compensation fund for lessees. As other recreational activities are recognized by the Land Board as having income-generating value for the school trusts, they may be included with hunting and fishing in the fee permit system. After considering the scope of access that is provided by the bill, many hunters and fishermen have agreed that a five-dollar annual fee is reasonable.

HB 778 provides many safeguards that protect the lessees from the problems that could occur when recreational users are permitted access to the leased state lands. HB 778 directs the land board to:

- close access to certain state lands under specified conditions;
- prevent off-road motor vehicle use;
- compensate lessees for actual damages caused by recreational users;
- engage in control activities for noxious weeds spread by recreational users;
- provide liability protection;
- require recreational users to provide notice to lessees; and
- provide for enforcement and penalties.

The Board of Land Commissioners is given the authority to make rules addressing the specific details of these provisions. The Board would have until March 1, 1992 to develop rules implementing the new law. The rules would be developed with significant input from all interested parties and only after opportunity for public hearings as required by the Montana Administrative Procedure Act.

We believe this bill represents the best solution for both resolving the recreational access issue and avoiding a lengthy and unpredictable court battle. We thank those sportsmen, ranchers, and farmers who have helped us draft HB 778. With the support of all of you, we will see the bill approved and rules implemented in a spirit of compromise and cooperation that will benefit all Montanans.


MIKE COONEY
Secretary of State


MARC RACICOT
Attorney General

Section by Section Review of HB 778

statement of intent. The statement of intent is fairly self explanatory. It indicates that state lands are open to the fullest extent possible, unless closed based upon the criterium established in the act. Closure would occur due to conflicts between recreational access and the existing leased activities. The statement of intent provides some directive for the rule making process and outlines the areas that rules must address.

Section 1. The amendment in this section is a technical change for codification purposes.

Section 2. This section amends the definitions section in title 77 (state lands). It defines "**commercial or concentrated use**" so that those activities will not be permitted on state lands unless specifically authorized by the department. "**General Recreational Use**" is defined as hunting and fishing and other compatible activity. This makes general recreational access to leased lands limited to hunting and fishing unless the Land Board expands the activities. If expanded then the other users will have to pay for access. The definition of "**legally accessible state lands**" makes it clear that access to state lands can be made only via public roads or by permission from the landowner across private land that is adjacent and contiguous to public access lands. Under no circumstances does this authorize trespass across private lands.

Section 3. This makes it clear that people are entitled to recreational use to state lands so long as the school trust is compensated.

Section 4. This provision makes it clear that all state land is open for recreational use unless closed pursuant to rules. State land leases must reflect this condition that the state lands are open unless closed by written approval of the department.

Sections 5 and 6. These are technical codification sections.

Section 7. This is the criminal penalty section for failure to have a permit for access to state lands for recreational purposes.

Sections 8 and 9. These sections provide for the authority of game wardens to enforces recreational access violations.

Section 10. This section provides for the distribution of money collected from fines. Fifty percent of this money goes to FWP and the remainder goes to the recreational use account (see Section 16).

Section 11. This is the specific penalty section for failure to have a recreational access permit when using state lands for recreational purposes.

Section 12. This section establishes the license fees and the distributions for those fees. The fee is established at \$ 5 with \$ 3 going to the school trust funds and \$ 2 going to the recreational use account, which covers administrative costs and actual damage compensation.

Section 13. This section authorizes the Land board to establish rules for closure and penalties for violations of the rules. The board can close sections of state land from recreational uses on a emergency, seasonal, temporary or permanent basis. The section specifically provides for the categorical closure of land leased for cabin sites, military, commercial, and mineral activities. The Board can also close lands during the seasonal presences of growing crops or livestock.

The board also can close lands on a case by case basis for the many reasons listed in subsection 5. It also can restrict uses based on the specific circumstances surrounding the tract of land.

Subsection (7) permits the board to establish rules for concentrated or commercial uses and the criterium for issuing permits for those activities.

Subsection (8) permits the board to establish civil penalties for violations of the act, and requires enforcement actions must be made pursuant to MAPA.

Section 14. This section limits the liability of the state and the lessee for injuries that occur to recreational uses of state lands. This section also removes the responsibility from lessees for fire control for fires caused by recreational uses.

Section 15. This section requires prior notification to the lessees before access may occur to leased sections. It requires the recreational user to provide his name and address to the lessees. The lessee is required to be available to receive notice from the recreational user or provide other means for notice. Subsections 2 and 3 provide strict liability for trespass from state lands to private lands.

Section 16. This section creates the recreational use account This is a special income account which permits money to come into the account from fees and fines and other sources. The money then go to run the program and to compensate lessee for actual damages they suffer as a result of recreation access to their leased lands. Money also can be used for a noxious weed control program.

Section 17. This section provides for reimbursement to lessees who suffer actual damages to their improvements and personal property on the leased sections. They must present their claim to the department. If the claim is paid then they subrogate their claim to the state.

Section 18. This section establishes a weed control program to control noxious weeds caused by recreational users.

Section 19. This is the necessary language to create statutory authority for the account created in Section 16.

Section 20. This section is the codification instruction section.

Section 21. This section is the severability section.

Section 22. This section gives the departments of state lands and fish wildlife and parks the authority to commence rule making activities so that the rules can be in place by the effective date.

Section 23. This section makes the act effective March 1, 1992.

EX 46
10 April
HB 778

TESTIMONY SUPPORTING PUBLIC ACCESS TO MONTANA STATE SCHOOL LAND
H.B.778

By John Gibson, Secretary Billings Rod And Gun Club.

One of the arguments used to discourage public access to Montana State School Land involves the intolerable amount of vandalism and other damage that would occur to property that the lessee leaves upon the land.

I would like you to look at this argument a little closer.

The Custer National Forest, where I worked for 15 years provides grazing for over 130,000 livestock on about 2 million acres of land. There are more than a thousand structural range improvements on this land. These structures include windmill, solar panels and propane tanks to power water pumps, stock water tanks, loading corrals, oilers, and thousand of miles of fences and water lines. Every one of these structures is on land where the public has year-round access. There is almost no damage to these improvements as a result of hunters, fishermen and other recreation users.

Another example of multiple uses was cited by the District Ranger of the Sheridan District, Beaverhead National Forest. During General Big Game Season an average of 156 vehicles per day enter the Upper Ruby Grazing Allotment. Most years show no damage to range improvements attributed to hunters.

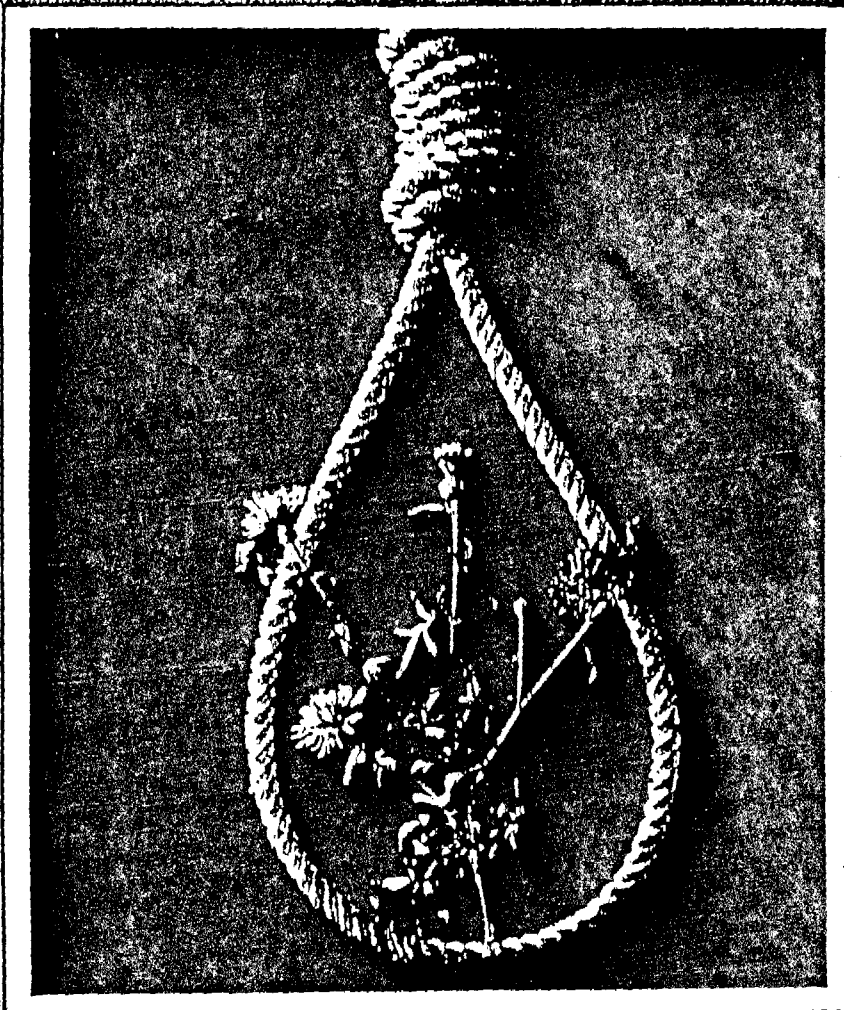
It is my opinion that there is little substance to this argument or any argument that suggests a public resource must be protected from the public by restricting it's use to a select few.

As I understand it over 70% of the comments from the public hearings favored reasonable public access to Montana State School Lands. Let government of the people prevail.

I ask you, on behalf of the Billings Rod and Gun Club and many other Montana citizens, to open this land to the public. It is time we followed the example of the majority of other western states and began to practice Multiple Use on public land.

April 91
HB778

CONTROLLING
KNAPWEED
ON MONTANA RANGELAND



Cooperative Extension Service
Montana State University, Bozeman

Published by
January 1978

Ex. 9
10-Apr-91
HB 778

If the rest period is followed with another period of grazing in the fall, livestock has an opportunity to utilize the basal leaves of rosettes at least twice during the year. This may reduce the competitive ability of the knapweed plants. While partial control may be possible in small, intensively managed pastures, there is no evidence that control of knapweed by sheep or any other livestock is feasible on extensively-managed rangelands.

Strategies to Slow Knapweed Spread

The spread of spotted knapweed by people must be addressed in any knapweed control project. Elimination of public access through infested areas would reduce the rate of spread.

Knapweed also has been introduced to new areas by the movement of contaminated grain seed and hay. These problems were magnified by the large shipment of hay from western to eastern Montana during the 1984 and 1985 drought. The subdivision of rural areas is another serious problem. Subdivision activity disturbs soil, creating an ideal seedbed conducive to weed invasion. The problem is compounded by owners of small tracts who do not recognize the need for weed control.

Good grazing management often is the first defense to the rapid spread of spotted knapweed on rangeland. While knapweed can invade excellent condition range, its rate of spread is slower than it appears to be on poor condition range. Although it is not known how much of the recent spread of knapweed can be attributed to poor condition range, the invasion is accelerated by any soil disturbance (Morris and Bedunah, 1984).

Grazing systems, or alternating periods of grazing use in a pasture with periods of rest to allow desirable plants to regain vigor, are an important tool for keeping rangeland in good and excellent condition. The rest rotation system, which allows one pasture to be rested from livestock use for a full year, has proved highly useful on Montana ranges. However, several Montana ranchers have observed that rest rotation is not effective on knapweed-infested range. They report that year-long rest allows knapweed seed production, and seed planting then is aided by hoof action the following year. This may indicate the need of a rotation system that allows repeated periods of grazing and non-grazing during each growing season on knapweed-infested range. A herbicide program should be implemented in conjunction with a grazing system, because competition by native forage species alone will not lower knapweed density.

Summary

Successful control of knapweed in Montana requires cooperation between private landowners, public land users and governmental agencies. To minimize the future spread of knapweed, each of us must do our part:

- Avoid driving motorized vehicles across knapweed infested areas.
- Do not purchase or transport hay or grain contaminated with knapweed.
- Minimize soil disturbance on range and other non-crop land.
- Use herbicides to eliminate small patches of knapweed.

Rest rotation grazing
E. G. M. H. A. C. 6. 10
Very little
knapweed on Mt.
Harrison

Ex. 10

10 Apr 91

HB 778

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10th day of April, 1991.

Name: Paul F. Berg

Address: 3708 Harry Cooper Place
Billings MT. 59106

Telephone Number: 656-2015

Representing whom?

Southeastern MT. Sportsman Assn.

Appearing on which proposal?

HB 778

Do you: Support? X Amend? Oppose?

Comments:

This is a compromise bill worked out after
20+ years of negotiations between all affected
parties. It has some questionable contents,
but we can work them out to everyone's
satisfaction at a later date.

Passage of HB 778 will result in a major
contribution to Montana's economy via grantman
expenditures for travel, lodging, supplies, etc
much of which will filter down through the
economy to local levels, and ^{help} support our
schools - a lot need more dollars.

See my two statements attached for
details —

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DEPT. OF STATE LANDS
FBS
10 April
HB 778
RECREATIONAL USE REPORT

BACKGROUND

Access to Montana's 5.2 million surface acres of school trust lands has become a highly controversial and complex issue and is presently the subject of a lawsuit between a group of sportsman's organizations and the Board of Land Commissioners and the Department of State Lands. While Montana's land area is made up of over 93 million acres of land, the wide dispersal of the state's 16,000 plus parcels of school trust lands place some tracts in close proximity to almost every Montana citizen. Sportsmen throughout the state are demanding access to the school trust lands for hunting, fishing and other recreational uses. Past and current Department policy has been to allow the existing surface lessee the authorization to preclude public access to the school trust lands if needed to protect the leasehold interest and reduce the liability imposed under stipulations of the lease. This has resulted in conflicts and disagreements between lessees, sportsmen and the Department over the management and use of state trust lands. The predominant question is: Is the Department going to authorize the recreational use of state trust lands by the public? And if the answer is "yes", how can this use be made compatible with other existing uses?

Most of the almost 28 million acres of federal land (excludes National Parks and Indian Reservations) in Montana are open to public access and recreational use. The fact that school trust land is different from federal public land and has different management objectives is oftentimes not well understood or accepted by the general public. Many see the large amount of state owned trust land as public domain and feel it should be open for their use. Sportsmen's groups are concerned with the increasing amount of private land being closed to public hunting and the blocked access to large tracts of federal lands. Sportsmen feel it is unlawful for lessees of state owned lands to be allowed to close state owned lands from public access and use.

Trying to determine which tracts of state owned trust land may be open for access can be confusing to the public. Currently the public may access and hunt on unleased or unlicensed state lands. This includes much of the state forested lands and also the unleased or unlicensed grazing and agricultural tracts. Those lands that are leased or licensed, however, may be posted by the lessee/licensee¹ who may either 1) allow no one or 2) everyone access to hunt. This variability in access causes con-

¹ Hereafter the term "lessee" will include both lessees and licensees and the term "leases" will include both leases and licenses. A lease is a land use authorization for the primary classified use of the land and a license is a land use authorization for other than the primary use.

The controversy surrounding the public use and recreational access of state trust lands is not a new issue however. It has been an issue with at least two legislative sub-committees over the past 25 years. In 1967 Senate Joint resolution No. 19 of the Fortieth Legislative Assembly resulted in the Committee to Study the Diversified Uses of State Lands, whose charge it was to develop a means to provide for the overall use of the State-owned lands for both public recreation and agricultural pursuits. This committee was responsible for drafting the present multiple use concept language in the present statute (77-1-203, MCA). During the 1975-77 legislative interim, the Subcommittee on Agricultural Lands was also directed to study the scope and possible solutions to the problem of public recreational access to school trust lands. Both committees prepared reports and recommendations but neither study has ended the controversy.

A major problem affecting the management and income producing capability of school trust lands shortly after statehood was finding someone with an interest in the widely scattered tracts. Over time the majority of the state's trust lands became leased to farmers and ranchers and became an integral part of their overall ranch or farm operations. Generally, because of personnel and funding levels, the Department of State Lands has historically allowed the lessee to manage the state's land because the lessee is on the property and closest to the land. This has resulted in a proprietary feeling among many of the lessees over "their" state land. The Department has exercised its management control in the past through the lease agreement and has designated the lessee to be largely the responsible party for fire, noxious weeds, and for damage to the property. This effectively resulted in an almost exclusive use right for the lessee.

In the mid-sixties the Board looked at the issue of access to school trust lands and determined that this access represented a compensable asset of the trust and that, at that time, it was not in the best interest of the trust to dispose of that asset.

In 1969 the multiple use concept was embodied in law and opened the way for consideration of a variety of resources other than direct products of the land.

In 1971 the Department began a survey, titled the "Recreation Inventory Program", to identify the types of recreational opportunities, locations of uses and general recreation potential existing on state trust lands. The survey evaluated recreation potential in terms of physical characteristics and potential or actual use to locate state lands that have great multiple use potential. The survey was completed in 1979 and the report titled Summary of Recreation Inventory was completed in 1982.

In 1979, the board adopted the surface leasing rules which reserved hunting and fishing access and authorized the lessee to post the lease to protect the leasehold interests.

With increasing demands by sportsmen for access, many landowners concerned with the problems of vandalism, carelessness, littering, and closed access to the state land. Sportsmen soon began to complain about state land lessees denying them access or charging them a fee for access to state owned land. In some cases complaints were made that landowners were blocking access to isolated tracts of federal lands by posting adjoining state lands against trespass.

In 1982 the State Land Department sent a letter to all lessees of state land stating that it had come to the Department's attention that some lessees of grazing or agricultural land were under a misunderstanding concerning hunting access rights on state trust land. The letter stated that the state has not issued hunting access rights on any state trust land and that the grazing or agricultural lessee could prevent unauthorized trespass on state land by hunters, but could not charge for hunting access without jeopardizing the lease.

In 1985 the Department developed a written policy on hunting on school trust lands in response to further questions and complaints by sportsmen. The Department's policy states:

The Board has reserved hunting and fishing access. Strictly speaking no one is allowed to hunt or fish on state land. However, it is not realistic to expect the lessee to keep everyone off. The lessee may post the lease to protect his leasehold interest. If it is posted no one, including the lessee may hunt on the lease. The lessee may allow hunting on the tract. However, if hunting is allowed, everyone must be allowed to hunt. The lessee may require everyone to check in before going on the tract to keep track of who is on it. However, no one may be denied. The lessee may not charge for hunting. All evidence that a lessee is charging for hunting should be submitted to the Department. The evidence will be pursued, and if there is sufficient evidence, the lease will be canceled. Any trespasser should be directed to leave the tract if it is posted.

On classified forest lands that do not have an exclusive license or lease for a particular purpose, the Department has generally allowed the public to engage in most types of recreational activities in addition to hunting and fishing without compensation or permit. For example, horseback riding, cross country skiing, and snowmobiling have been allowed to the general public unless an exclusive license for those purposes has been issued to a particular individual or group on a specific tract. On classified grazing and agricultural lands the Department's procedures require a land use license to be obtained for any

recreational use other than hunting before access and use are formally permitted.

Lessees have generally been supportive of the present policy regarding recreational access and use of state trust lands and are opposed to allowing unrestricted public access on lands they lease from the state. They are concerned that increased traffic will bring increased weeds, erosion, fires, vandalism, litter, unwanted roads, trespass on private lands, increased administrative burdens, and a greater overall risk to them under the liability imposed by the terms of their state lease.

Sportsmen are generally opposed to the present policy which allows lessees the right to restrict the public from access to state trust lands. Sportsmen generally want access privileges to hunt and fish on state owned lands. Many do not feel compensation should be required for recreational uses as they are already paying taxes to support the land.

In February of 1988, a group of sportsman's organizations, organized as the Montana Coalition for the Appropriate Management of State Lands, filed suit in state district court in Helena against the Department of State Lands and the State Board of Land Commissioners. The Coalition alleges that trust land must be open to the public for recreational purposes without compensation to the trust, that the Department must prepare an environmental impact statement on its grazing lease program, and that the minimum rates for grazing land must be increased. As an alternative to the first allegation the Coalition alleges that, if the state must charge for recreational access, it must develop a system whereby state lands are available and compensation is secured. The Montana Stockgrowers Association, Montana Farm Bureau Federation, and certain individuals intervened as defendants.

In October of 1989 the Board directed the Department to explore parameters for settlement of the access suit and negotiations toward settlement were begun.

In March of 1990, after much progress had been made toward settlement of the access lawsuit, negotiations broke down over the issue of compensation to the lessees. The Coalition's position was that compensation to the lessees should occur only when physical damage had occurred on the lease. The view of the Montana Stockgrowers Association, was that all lessees who were impacted by increased accessibility by recreationists should receive compensation. The Board felt that, regardless of the impasse in negotiations, it should proceed towards resolving the access issue.

In April of 1990, the Department was directed by the Board to conduct public meetings to gather public input towards resolving the access issue and to accept written comments, summarize

in forming a recommendation to the Board. The following questions were asked:

1. How should the Department administer recreational uses of school trust lands (i.e. leasing by competitive bid, licensing for limited uses during specific timeframes, open public access at specific times of year, open public access at all times, others)?
2. At what monetary level should the school trusts be compensated for recreational uses?
3. What, if any recreational uses of school trust lands, would you be willing to pay for?
4. Should existing lessees be compensated for damages incurred by recreational users, and if so, in what form should this compensation be?
5. Under what conditions, if any, should school trust lands be closed to public recreational uses?
6. How should the issues of fire control, weed control, erosion control, and vehicle control regarding recreational uses be addressed?
7. Additional comments.

The Department accepted public comment through June 5, 1990 and received 150 public comment forms. In summarizing the comments, responses for each question were grouped into like categories and then totaled by category. Percentages were then determined for each category based upon the total number of responses received for each question. In questions where more than one response was appropriate, each response was noted in the appropriate category.

Responses to the first question, How should the Department administer recreational uses of school trust lands (i.e. leasing by competitive bid, licensing for limited uses during specific timeframes, open public access at specific times of year, open public access at all times, others)?, were as follows:

Open access at all times	79%	86%
Open access at specific times	7%	
Leasing by competitive bidding	7%	
No change	5%	
Licensing for limited uses	3%	

In reviewing the comments to the first question it appears that the majority of the respondents favored open public access

to state trust lands and did not favor individual leases by competitive bid.

Responses to the second question, At what monetary level should the school trusts be compensated for recreational uses?, were as follows:

1-10 dollars on conservation license	20%
Competitive with Federal and State park fees	2%
No Charge	23%
Reasonable rate	33%
Don't know	19%
25-100% of agricultural lease rate	3%

In reviewing the comments to the first question it appears that the majority of the respondents felt that the school trusts should be compensated but were not in any agreement as to the amount.

Responses to the third question, What, if any recreational uses of school trust lands, would you be willing to pay for?, were as follows:

Damages	11%
All recreational uses	29%
Camping or skiing	1%
Hunting and fishing only	8%
None	31%
Don't know	19%

In reviewing the responses to the third question it appears that the question was interpreted several different ways. Eleven percent felt that they would be willing to compensate lessees for damages on private improvements. Thirty one percent were not willing to pay for any recreational use while twenty nine percent were willing to pay to conduct all recreational uses. Eight percent were only interested in hunting and fishing access.

Responses to the fourth question, Should existing lessees be compensated for damages incurred by recreational users, and if so, in what form should this compensation be?, were as follows:

Yes, amount of damages	55%
Yes, reduced AUM payment	4%
No	28%
Don't know	13%

In reviewing the fourth question it appears that the majority of the respondents felt that the surface lessees should be compensated for damages incurred by recreationists to their privately owned improvements but only for the amount of damages.

EX#11
10 April
HB 778

1

TESTIMONY ON H.B. 778
RECREATIONAL ACCESS ON STATE LANDS

APRIL 10, 1991

MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE, I APPRECIATE THIS OPPORTUNITY TO TESTIFY ON HOUSE BILL 778. MY NAME IS ROBERT DUPEA AND I OWN A RANCH NEAR WHITE SULPHUR SPRINGS. I APPEAR TODAY ON BEHALF OF THE MONTANA STOCKGROWERS AND AS CHAIRMAN OF THE STOCKGROWERS PRIVATE LANDS COMMITTEE.

AS MOST OF YOU MAY ALREADY KNOW, IN 1988 A GROUP CALLED THE COALITION FOR APPROPRIATE MANAGEMENT OF STATE LANDS INSTITUTED A LAWSUIT AGAINST THE STATE OF MONTANA CHALLENGING THE MANNER IN WHICH STATE LANDS HAVE HISTORICALLY BEEN MANAGED. SPECIFICALLY, THE COALITION WANTED RECREATIONAL ACCESS TO STATE LANDS HELD BY LESSEES. THE LAWSUIT WAS SCHEDULED FOR THIS MONTH AND HAS BEEN TEMPORARILY POSTPONED DUE TO THIS PENDING LEGISLATION. THE POINT I AM MAKING IS -- STATUS QUO IS PROBABLY NOT AN OPTION IN THE RESOLUTION OF THIS MATTER.

AS A RESULT OF THIS LAWSUIT -- AND THE POLARIZED ISSUE -- REPRESENTATIVE DAVE BROWN CAME OUT WITH TWO BILLS GRANTING ACCESS TO STATE LANDS. THE BILL YOU HAVE BEFORE YOU TODAY IS THE RESULT OF HOURS AND HOURS OF NEGOTIATIONS AND COMPROMISE BY BOTH SIDES. THERE ARE MANY GROUPS AND STATE AGENCIES INVOLVED IN THIS COMPROMISE LEGISLATION, INCLUDING THE STOCKGROWERS, THE WOOL

GROWERS, THE SKYLINE SPORTSMEN, THE WILDLIFE FEDERATION, THE ATTORNEY GENERAL, THE GOVERNOR'S OFFICE, THE DEPARTMENT OF STATE LANDS, THE MONTANA CATTLEWOMEN, THE SECRETARY OF STATE, THE OFFICE OF PUBLIC INSTRUCTION, THE DEPARTMENT OF FISH, WILDLIFE AND PARKS, AND MANY OTHERS.

WE BELIEVE THAT THIS LEGISLATION PROVIDES ADEQUATE PROTECTION FOR LESSEES OF STATE LANDS, ALLOWS THE NECESSARY PROVISIONS FOR CLOSURE DUE TO THE PRESENCE OF BUILDINGS, GROWING CROPS AND LIVESTOCK, AND WE ARE RELATIVELY COMFORTABLE WITH THE COMPENSATION ACCOUNT SET UP FOR DAMAGE TO IMPROVEMENTS ON LEASEHOLD LANDS WHICH MAY BE CAUSED BY RECREATIONAL USE. FURTHERMORE, THE STATE LAND BOARD WILL PROVIDE MUCH OF RULES AND REGULATIONS THROUGH THE RULEMAKING PROCESS AND WE INTEND TO BE ACTIVELY INVOLVED IN THAT PROCESS.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I WOULD LIKE TO CLOSE MY REMARKS BY URGING THE COMMITTEE TO PASS THIS BILL WITHOUT AMENDMENTS. WE COMMEND DAVE BROWN FOR HIS STATESMANSHIP AND DIPLOMACY IN BRINGING THE PARTIES INVOLVED IN THE LAWSUIT TO THE TABLE. I BELIEVE THERE IS GENERAL AGREEMENT THAT THE LEGISLATION ADDRESSES THE CONCERNS WHICH PRECIPITATED THE LAWSUIT. THE PRECEDENT OF RANCHERS AND SPORTSMEN IN AGREEMENT ON A POLARIZED ISSUE IS ONE YOU MAY NOT HAVE SEEN IN RECENT YEARS. WE HOPE IT WON'T BE THE LAST TIME, AS WE BELIEVE THAT WE ARE NATURAL ALLIES.

THANK YOU.



MONTANA FARM BUREAU FEDERATION

502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

10 April 91
HB 778

BILL # HB-778 ; TESTIMONY BY: Lorna Frank

DATE April 10, 1991 ; SUPPORT Yes ; OPPOSE

Mr. Chairman, members of the committee for the record, I am Lorna Frank, Director of Information for the Montana Farm Bureau. *I am also representing A.P.A.*
Farm Bureau supports HB-778 as you see it today without any amendments. This bill represents a compromise by all parties involved. Any amendments to the bill could dissolve those compromises and I am afraid we could have another stream access, which none of us want.

We support this bill because the money to do an EIS or economic analysis is in the Governor's budget. We believe an EIS or economic study should be done by the state to determine the recreational values of school trust lands and that the uses are compatible with the agriculture leases. There are many questions an economic study can answer.

The bill provides for a report by the Board of State Land Commissioners of its findings and recommendations to the 53rd Legislature. If the board finds that a part of this bill will not work, the legislature can change it at that time.

Farm Bureau wants to be involved in the rule making process and will participate as much as possible with our limited resources.

Thank you.

SIGNED: Lorna Frank

== FARMERS AND RANCHERS UNITED ==

10 April 91
HB 778

Good morning Mr. Chairman and Members of the Committee. For the record my name is Ed Lord, a rancher from Philipsburg, MT currently serving as First Vice President of Montana Stockgrowers Association. I am testifying in favor of Amended HB 778 on behalf of my family and the Montana Stockgrowers Association. We lease a Section 16 of school trust lands from the State of Montana as part of our ranching operation.

As you have heard or will hear, Amended HB 778 is an equitable compromise resulting from many hours of hard work on the part of State Land lessees and the people desiring recreational access to those lands.

This morning, I am here to talk about the \$5.00 fee as spelled out in Section 12 and prior notification referred to in Section 15. As you know, the State Land Board is bound by both the United States Constitution and the Montana Constitution to derive income for the schools from the trust lands. A \$5.00 fee is very reasonable when you consider that in the Environmental Impact Statement on the Upper Ruby Grazing Allotment, the U. S. Forest Service determined the value of one hunter day to be worth \$50.00.

We also feel that having the recreationist give prior notification to the lessee is very appropriate. Since the lessee has the responsibility for the upkeep and maintenance of the State Land lease, he needs to know who is using it.

For a moment, I would like to have you consider this analogy. Think about school trust lands as being like your local high school gymnasium. As a member of the public, you own it but you certainly don't have the right to use it any time you wish. If you do get limited use, you must give the school prior notice and in many cases pay a fee.

In closing, I would again repeat that Amended HB 778 is a fair compromise resulting from many hours of hard work on behalf of all parties involved. I urge you to support this bill without further amendments. Thank you for your attention.

10 April 91

Exhibit 14 (Knute Hereim) was not transmitted with the minutes.

WITNESS STATEMENT

Dated this 10th day of April, 1991.

Name: Ronald B. Stevens

Address: 3745 Deer Creek Drive, Bozeman, Montana 59715

Telephone Number: 586-7810

Representing whom?

Public Land Access Association, Inc.

Appearing on which proposal?

HB 778

Do you: Support? ✓ Amend? Oppose?

Comments:

See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



**PUBLIC LAND
ACCESS
ASSOCIATION
INC.**



**P.O. BOX 3902 • Bozeman, Montana • 59772-3902
(406) 587-2736 or 586-7810**

10 April 1991

PRESIDENT

Ronald B. Stevens
Colonel, USA, Ret.
Bozeman, MT

1st VICE PRESIDENT

William A. Fairhurst
Three Forks, MT

2nd VICE PRESIDENT

Mark Sabo
Gallatin Gateway, MT

EXECUTIVE DIRECTOR

Lewis E. Hawkes
Professional Wild Lands Mgr.
Bozeman, MT

SECRETARY/TREASURER

Stephanie Smith
Bozeman, MT

DIRECTORS

Perry Nelson
Fish & Wildlife Mgr., Ret.
Bozeman, MT

Paul F. Berg
Biologist, Ret.
Billings, MT

Jerry Jackson
Real Estate Broker
Billings, MT

Craig Staley
Sheridan, MT

Vergil L. Lindsey
Forester, Ret. District Ranger
Ennis, MT

Robert E. Olson
Ret. NP - BN Switchman
Livingston, MT

Edward W. Osborn
School Bus Contractor
Alder, MT

Senator Dick Pinsoneault
Chairman
Senate Judiciary Committee

I am Ron Stevens, President of the Public Land Access Association, INC. (PLAAI) representing approximately 835 individual and 6,000 affiliate members, all public land users.

Approximately 2½ years ago then Governor Schwinden said access was the most important issue facing the Montana recreationist. Shortly thereafter Jim Flynn, then Director of the Montana Dept of Fish, Wildlife and Parks, when asked to identify the most important problem facing his department stated, "In a word, access." On 5 December last year K. L. Cool, current Department Director announced, "The number one Sportsman issue in Montana is access. It overrides everything else."

On 10 December 1990 I accepted Governor Stephen's invitation to attend a three day conference in Billings. The governor's invitation read, "It is my pleasure to invite you to what I feel is one of the most important conferences of the year-- the Governor's Conference on Rangelands." The conference theme was "Building Partnerships for the 90s." Sixty one speakers emphasized the importance of working together to solve rangeland management problems. At an appropriate time during the last day of the conference I noted the attendees prevailing fear of the "Cattle Free By '93" and "No More Moo By '92" movements. I stated that we public land users also believe the animal rights and anti-hunting groups will soon introduce another catchy slogan like "No More Boomin in the Bloomin." I said then, and I repeat it now, if the Governor and the rangeland community are serious about building partnerships for the 90s, what better group to woo than the 53% of Montana's population which annually purchases conservation licenses and has a stake in the husbandry of rangelands?

HB 778 offers a marvelous opportunity to establish the first and most important, partnership for the 90s, a partnership between landowners and sportsmen of this great state, a partnership Governor Stephens challenged Director Cool to make his number one priority upon his appointment.

PLAAI strongly supports HB 778 and urges its passage!

Respectfully submitted.


Ronald B. Stevens
President

10 Apr 91
HB 778

TESTIMONY ON H.B. 778 ..

RECREATIONAL ACCESS ON STATE LANDS

APRIL 10, 1991

MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE, MY NAME IS ROLAND MOSHER AND I AM A RANCHER FROM AUGUSTA. I APPEAR TODAY AS A BOARD MEMBER ON BEHALF OF THE MONTANA STOCKGROWERS.

AS YOU HAVE HEARD IN PREVIOUS TESTIMONY, THE MT STOCKGROWERS SUPPORTS HOUSE BILL 778. SEVERAL WEEKS AGO OUR BOARD OF DIRECTORS MET WITH DAVE BROWN, MARC RACICOT, DENNIS CASEY AND THE ATTORNEY REPRESENTING OUR ASSOCIATION IN THE PENDING LAWSUIT. EACH PRESENTED US WITH WHAT THEY BELIEVED TO BE OUR OPTIONS REGARDING RECREATIONAL ACCESS TO STATE LANDS. WITH THE STREAM ACCESS ISSUE FRESH IN OUR MINDS, WE CONCLUDED THAT THE COURT MAY NOT BE THE MOST PRUDENT COURSE FOR RESOLUTION OF THE ACCESS ISSUE.

SUBSEQUENTLY, WE SAT DOWN AT THE SUBCOMMITTEE TABLE AND WORKED SIDE BY SIDE WITH OUR ADVERSARIES IN THE LAWSUIT AND NEGOTIATED A COMPROMISE BILL FOR RECREATIONAL ACCESS THAT WE FEEL WE CAN LIVE WITH. THERE MAY BE SOME RANCHERS WHO WILL DIFFER FROM OUR POSITION, BUT OUR OFFICE HAS NOT HAD A SINGLE CALL IN OPPOSITION TO THIS BILL. THE LESSEE CLOSURE PROVISIONS AND DAMAGE COMPENSATION ASSURANCES ARE INCORPORATED IN THE BILL AND WE BELIEVE THAT THOSE ARE ADEQUATE TO PROVIDE THE LESSEE WITH THE LEGAL PROTECTION NECESSARY TO ALLOW FOR RECREATIONAL ACCESS TO STATE LEASED LANDS.

10 Apr 91
HB 778

I HAVE ATTACHED A FACT SHEET ON HOUSE BILL 778 TO MY TESTIMONY FOR YOUR CONVENIENCE AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE. I WOULD RESPECTFULLY URGE YOU TO PASS THIS BILL WITHOUT AMENDMENTS FROM COMMITTEE AND ALSO SUPPORT IT ON THE SENATE FLOOR. THANK YOU FOR YOUR CONSIDERATION.

Ex. 16
10 - Apr. 91
HD 778

REVIEW OF HB 778 WITH BROWN AMENDMENTS
RECREATIONAL ACCESS TO STATE LANDS

HISTORY OF SCHOOL TRUST LANDS

The school trust lands were granted to the State of Montana in 1889 by the federal government in the MT Enabling Act, to benefit the "common schools". These lands were granted in trust with the state, through the Board of Land Commissioners (BLC), serving as the trustee. Montana statutory law mandates that the BLC "shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state", and the MT Supreme Court has long held that "an interest in school land cannot be alienated unless the trust receives adequate compensation for that interest." As recently as 1983, the Attorney General addressed the issue of compensation to the school trust. He stated that "the mandate to obtain fair market value, because of its fundamental sources, cannot be negated nor diminished by statute."

In 1988, a group called the Coalition for Appropriate Management of State Lands instituted a lawsuit against the state, challenging the manner in which school trust lands have historically been managed. The focus of the litigation is a demand that the lands be open to public recreational access. The court date, originally set for April 1991, may be rescheduled due to pending legislation. The issues involved in the lawsuit are within the discretion of the BLC and the DSL and should be addressed through the legislative and administrative processes, rather than in a court of law.

Two state land access bills were originally introduced and heard in the House Natural Resources Committee. As a result of deliberations by concerned parties, a compromise bill was developed. In full committee the compromise was not accepted, but the bill was amended by Rep. Ben Cohen to reflect his amendments. Rep. Dave Brown, the bill sponsor, favors the compromise amendments and will attempt to incorporate them on second reading. Following is an overview of Brown's amendments.

GENERAL OVERVIEW

HB 778 (with Dave Brown's amendments) requires the BLC to adopt rules to implement provisions for recreational use of state lands and to govern the actions of the recreational user. The rules will address protection of the resource value, compensation for damage to improvements, criteria of closure, restriction of recreational use to hunting and fishing and, when requested by a lessee, a provision for the recreational user to provide prior notice of the type and extent of use.

Certain state lands will merit closure from recreational use due to the presence of growing crops and livestock and the proximity of dwellings and agricultural buildings.

PROVISIONS OF CLOSURE

- o All state leased or licensed land will not be closed without prior written permission by the Department of State Lands.
- o Closures may be of an emergency, seasonal, temporary or permanent nature.
- o State lands may only be closed after public notice and opportunity for public hearing, except in the case of an emergency closure or other circumstances deemed necessary by the BLC.
- o Categorical closure: Cabin site and home site leases and licenses, the seasonal presence of growing crops, and active military, commercial or mineral leases.
- o Case-By-Case closure: Damage attributable to recreational use that diminishes the income-generating potential of state lands, damage to surface improvements of the lessee, the presence of buildings, structures and facilities, and noxious weed control.
- o The BLC, through rules, may impose restrictions upon general recreational activities including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the presence of livestock.
- o The BLC may restrict access on state lands in block management program areas.

MOTORIZED VEHICLES

- o All off-road use prohibited.
- o Restricted to Federal, state, and dedicated county roads.

PRIOR NOTIFICATION & TRESPASS

- o Lessee must post land with pertinent information if lessee desires to be notified prior to anyone entering the leasehold.
- o When land is posted, recreational user must contact and identify themselves to lessee. However, lessee must be available or provide adequate method for notice to be given.
- o Entry onto private lands, without landowner permission is trespass, punishable under current law.
- o If the lessee posts the leasehold for notification, it does not give permission to enter adjacent private lands. Entry without permission, **regardless of the absence of fencing or "no trespass" signs**, is a misdemeanor. (Current trespass law.)

STATE LANDS RECREATIONAL USE ACCOUNT

- o \$5 fee charged for recreational access.
- o \$2 of the fee is deposited in a State Lands Recreational Use Account and \$3 to school trust account.

These monies are used for:

1. Compensation for damage to improvements on leasehold lands which have been caused by recreational use.
 - a) Will provide reimbursement to lessee for documented costs of repair or replacement of improvements including growing crops, livestock damaged by recreational use.
2. Assistance in weed control management necessary as a result of recreational use of state lands.
 - a) Adopt weed control program.
 - b) Payments for weed control assistance.
 - c) Payments to county weed boards.
3. Protection of the resource value of the trust assets.
4. Administrative costs of recreational use on state lands.

ECONOMIC ASSESSMENT/ENVIRONMENTAL IMPACT STATEMENT

Any type of responsible recreational access legislation must be accompanied by funding for an assessment of the impact to the environment and/or economy. This proposed change of use involves more than 5 million acres of school trust land which is reason enough for a social and economic assessment and legally, the State's trust responsibility must be met. The only way to determine this is by a assessment of the impact of the new use to the trust lands.

Currently the Governor's budget includes \$300,000 for this type of study. This has passed the House and is headed for the Senate.

EFFECTIVE DATE OF PROGRAM: MARCH 1, 1992

Ex. #17
10 Apr 91
HB 778

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10th day of April, 1991.

Name: James W. McDermond

Address: 3805 4th Ave South

Great Falls, MT 59405

Telephone Number: 761-0303

Representing whom?

Montana Coalition for Appropriate Mgmt. of State Land

Appearing on which proposal?

H.B. 778

Do you: Support? X Amend? Oppose?

Comments:

Written Testimony attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

April 10, 1991

CX 7
10 Apr
HB 778

Senate Judiciary Committee
State Capitol
Helena, Montana

Chairman Pinsonneault and Members of the Committee:

My name is Jim McDermid and I am the spokesman for the Great Falls chapter of the Montana Coalition for Appropriate Management of State Land.

We support HB778 for many reasons, but allowing recreational use of state lands under the multi-use concept as prescribed by law is the most important consideration.

Most of our surrounding states have their state lands open to all citizens for recreational use under the multi-use concept. While we have this same mandated multi-use concept in Montana, it has only been in theory and not in fact; based, we have been told, on economic factors. HB778 addresses this economic issue by having the sportsmen pay for this right of multi-use. Sportsmen have, and are still willing to pay for what they use.

While sportsmen in surrounding states have enjoyed the benefits of true multi-use with no financial re-imbursement, the sportsmen of Montana have addressed this financial quantum by assessing a fee for recreational use of state lands. A portion of the money goes to the Department of State Lands for management, and the remainder goes to the state school trust, the ultimate benefactor.

The intent of this bill is not to interfere with the rights of the lessee, but to comply with the multi-use concept. We acknowledge that there may be a compelling need to restrict or close public access for a specific classification of land, i.e. the 12% of state lands utilized for crops should be denied access during the growing period. This bill addresses this issue, enabling the board to close any section when convincing evidence dictates.

There is also a concern of potential property damage and liability. There are existing laws to protect the lessee, which should keep this problem to a minimum through proper enforcement of these appropriate regulations. This bill allows access only to those sections that can be reached by a public right of way, not through private property. It also states that vehicle use would be limited to existing roads and trails, with no expansion of off-road vehicle use allowed.

CF 11
10 Apr 91
HB 778

For more than a decade we have attempted to resolve this matter through the State Lands Board to no avail. This bill, has been thoroughly researched to eliminate those potential problems that the State Lands Board and others are concerned about. Let us all put this issue behind us by passing HB778.

Sincerely yours,

James W. McDermand

James W. McDermand
3805 4th Ave So
Great Falls, Mt 59405

10 Apr 91

HB 778

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10th day of April, 1991.

Name: Alan W. Rollo

Address: 808 52nd St So

Great Falls, Mt 59405

Telephone Number: 727-4437

Representing whom?

self

Appearing on which proposal?

HB 778

Do you: Support? ✓ Amend? Oppose?

Comments:

see attached testimony

April 10, 1991

15 Apr 91

HB 778

Senate Judiciary Committee
State Capitol
Helena, Montana

Chairman Pinsoneault and Members of the Committee:

My name is Alan Rollo and I am representing myself as one who enjoys the splendors of Montana.

I support HB778 which will allow the use of State Lands for all us to enjoy.

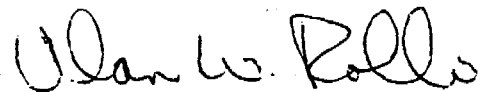
This bill addresses the issues of concern to the present leases, while at the same time opens the land for the enjoyment of the general public. I truly believe that this bill will accomplish both in a harmonious way.

House Bill 778 appropriately limits access to the public to only those lands that are accessible by existing public right away. It does not take away any rights of landowners but does allow use of state lands by the general public.

Public use of these lands will benefit people in many ways. Bird watchers, photographers, and all of those who enjoy the scenery of Montana will benefit from this bill. They all of course will contribute their share to the state school trust for this privilege.

The passage of HB778 would enhance the enjoyment of state lands by all Montanans. Please support this bill.

Sincerely,



Alan W. Rollo
808 52nd St So
Great Falls, Mt 59405

WITNESS STATEMENT

EX 11
4/9/91
HB 778

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10TH day of APRIL, 1991.

Name: BOB BUGNI

Address: 2545 PRICKLY PEAR AVE
EAST HELINA

Telephone Number: 227-8749

Representing whom?

PRICKLY PEAR SPORTSMAN ASSN - HELINA

Appearing on which proposal?

HB 778

Do you: Support? X Amend? Oppose?

Comments: AS AMENDMENT IN HOUSE

EVEN THOUGH THIS BILL HAS SOME
PROVISIONS THAT OUR MEMBERS DO
AGREE WITH ALL PROVISIONS OF THE BILL
NOT THAT IT IS A COMPROMISE

SOLUTION TO STATE LAND MANAGEMENT
AND ACCESS. & WE ARE ASKING FOR YOUR SUPPORT.

WE WOULD LIKE THE COMMITTEE
TO REVIEW A MEMORANDUM FROM
THE LEGISLATIVE AUDITORS SHOWING
A NUMBER OF IMPORTANT FACTS

(1) THE MOST IMPORTANT BEING
THAT THE GENERAL FUND SUPPORTS
ABOUT 50% OF DEPARTMENT OF STATE
LANDS BUDGET. SPORTSMEN THROUGH

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

OVER
11

THE GENERAL FUND HAVE BEEN
SUPPORTING STATE LANDS FOR YEARS
WHILE THE ACCESS ISSUE HAS
BEEN STALLED. CURRENTLY THE
GENERAL FUND PAYS FOR THE LAND
ADMINISTRATION PROGRAM & SIGNIFICANT
PARTS OF THE CENTRAL MAINTENANCE
AND FORESTRY PROGRAMS. REPORT SHOWS

1987-88

617.7 million OF WHICH 46.2% GENERAL F.

1988-9

28.2 million " " 63.3% " "

THE LARGE INCREASE BETWEEN 1987-88 & 1988-9
WAS DUE TO HIGHER SUPPRESSION COSTS FOR FIRES.

- (2) OTHER ITEMS OF INTEREST IN AUDITORS REPORT
INCLUDE THE 1983 PERFORMANCE AUDIT SHOWING
GRAZING RATES WERE NOT MAXIMIZING INCOME
TO THE TRUST FUND
- (3) ALSO THAT DEPARTMENT DID NOT SEEK
COMPETITIVE BIDS ON STATE LEASES
- (4) AT TIME OF PERFORMANCE AUDIT THE DEPARTMENT
DID NOT HAVE A PLAN FOR MULTIPLE USE
OF STATE LANDS AS REQUIRED UNDER MCA
77-1-203 LEGISLATIVE AUDITOR RECOMMENDED
TO DEPARTMENT THAT ~~A PLAN~~ DEPARTMENT
DEVELOP PLANS & POLICIES FOR THE MULTIPLE-
USE OF TRUST LAND

TO CLOSE THIS IS A COMPROMISE BILL THAT PROVIDES
FOR MULTIPLE USE OF STATE LAND & INCREASES INCOME



STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

10 April 91
HB 778
DEPUTY LEGISLATIVE AUDITORS:

MARY BRYSON
Operations and EDP Audit

JAMES GILLET
Financial-Compliance Audit

JIM PELLEGRINI
Performance Audit

LEGISLATIVE AUDITOR:
SCOTT A. SEACAT
LEGAL COUNSEL:
JOHN W. NORTHEY

*Funds what strings FW
How much money from Dept.*

January 16, 1991

Representative Robert Pavlovich
Capitol Station
Helena, MT 59620

Dear Representative Pavlovich:

Enclosed is a memorandum discussing the issues you raised related to the Department of State Lands. Also enclosed is a copy of our latest financial-compliance audit of the department and our 1983 performance audit of "State-Owned and Leased Land." Most of the issues in your request have been previously examined and debated.

We found the various trust funds are showing a stable gain in both income and fund balance. The combined trusts are currently earning over \$50 million a year with the largest beneficiary being common schools.

The questions related to the potential of increasing trust income are hard to answer. Currently leases on trust lands are raising about 26 percent of trust income. By far, investment earning is the largest contributor to trust income.

Currently the General Fund supports about 50 percent of the Department of State Land's budget. We have made some recommendations in our reports that could reduce the use of the General Fund. The Governor has also proposed changing some of the department's funding source to reduce the use of the General Fund. The Legislative Fiscal Analyst questions whether the change will really reduce overall General Fund expenditures.

Recreation access may be the most controversial issue covered. It appears this issue is on hold, at least until the Environmental Impact Statement (EIS) requested by the Board of Land Commissioners is completed.

Office of the Legislative Auditor

Various Topics Related to the Department of State Lands

Legislative Request 90L-89
January 16, 1991

Introduction

The Department of State Lands (DSL) is responsible for the care, management, and disposition of state trust lands. Trust lands are acreages granted to the state by the U.S. Congress for common school support and for support of other educational and state institutions. Each land grant has a permanent fund (except for the public building grant) which is to remain intact for the purposes for which it is dedicated. Permanent funds consist of money received from land sales and mineral royalties. The permanent fund for common schools also receives 5 percent of the interest from the fund and 5 percent of the income from leasing of the land. Each grant also has an income fund which is used for maintaining and sustaining the corresponding university or institution, or for common school support. The income fund for each grant consists of money from leasing the land, interest earned on the investment of the permanent fund, and other income sources such as timber sales.

The Office of the Legislative Auditor was requested to examine various topics related to the Department of State Lands and the management of trust lands. Many of these issues have been examined and debated for several years. This memorandum presents information on some of the topics from our 1983 performance audit of "State-Owned and Leased Land." Some of this information has been updated using our latest financial-compliance audit of the department (for fiscal year-end June 30, 1989), the Governor's Executive Budget for the 1993 biennium, and the budget analysis by the Legislative Fiscal Analyst. Information on trust fund balances and income was obtained from the Montana Comprehensive Annual Financial Reports and the Supplemental Financial Schedules issued by the Department of Administration.

Financial Condition of the Trust Funds

The following chart shows a summary of overall trust land income and fund balances for the last four fiscal years. The amount of revenue raised has been steadily increasing along with the fund balance.

Use of General Fund Moneys for DSL Operations

Questions were raised about the use of General Fund moneys to support the Department of State Lands. Currently the department funds its Land Administration program entirely from the General Fund. The General Fund is also used for significant parts of the Central Management and Forestry programs. The following chart shows the percent of General Fund used by each DSL program for FY 1987-88 and FY 1988-89.

Department of State Lands
Expenditures by Program and Fund
Fiscal Years 1987-88 and 1988-89

Fiscal Year 1987-88

Program	General Fund Expenditures	All Other Fund Expenditures	Total Expenditures	Percent General Fund
*****	*****	*****	*****	*****
Central Management	\$1,058,184	\$ 413,266	\$ 1,471,450	71.9%
Reclamation	82,797	6,018,566	6,101,363	1.4%
Land Administration	544,506	0	544,506	100.0%
Resource Development	0	234,594	234,594	0.0%
Forestry	<u>6,470,984</u>	<u>2,836,274</u>	<u>9,307,258</u>	<u>69.5%</u>
Total	<u>\$8,156,471</u>	<u>\$9,502,700</u>	<u>\$17,659,171</u>	46.2%

Fiscal Year 1988-89

Central Management	\$ 1,061,811	\$ 346,677	\$ 1,408,488	75.4%
Reclamation	83,975	6,958,828	7,042,803	1.2%
Land Administration	556,443	0	556,443	100.0%
Resource Development	0	263,319	263,319	0.0%
Forestry	<u>16,132,137</u>	<u>2,760,696</u>	<u>18,892,833</u>	<u>85.4%</u>
Total	<u>\$17,834,366</u>	<u>\$10,329,520</u>	<u>\$28,163,886</u>	63.3%

Source: OLA F/C Audit of the Department of State Lands FYE June 30, 1989

Our F/C audit of DSL for fiscal years 1987-88 and 1988-89 noted the department could have reduced its General Fund expenditures and used funds available in the Special Revenue Fund for both the Central Management and Forestry programs. The law requires the department to apply expenditures against non-General Fund money wherever possible before using the General Fund Appropriation. The potential General Fund savings amounted to approximately \$250,000.

The department's expenditures for the Forestry program were significantly higher in FY 1988-89 due to higher fire suppression costs. Because of the unpredictable nature of fires, it is difficult to budget fire suppression costs. Often the department must request approval for supplemental appropriations. During the 1989 session the department was granted a supplemental appropriation of approximately \$12.6 million in General Fund money. The current executive budget requests a supplemental appropriation of approximately \$2.5 million for the 1991 biennium for fire suppression costs. In our F/C audit we recommended the department work with the Office of Budget and Program Planning to find a funding source to build a reserve fund for payment of future fire suppression costs. Eventually the department could build a large enough reserve fund to replace the General Fund as the source of fire suppression funding.

Proposed Funding Changes

The executive budget for the 1993 biennium proposes replacing General Fund money with trust fund interest for department functions related to the management of trust lands (\$3.39 million in each year of the biennium). The budget states it is customary for governmental and private trusts to finance management of these trusts with a portion of the earnings generated. Ten other western states use trust revenues to finance trust management activities. The money would be raised by diverting up to 10 percent of trust lands income that is not designated for placement in the permanent funds.

The 1993 biennium LFA budget analysis states the Governor's proposal raises constitutional issues since the full 95 percent of interest and income from the common school trust would not be deposited in the school equalization account (SEA). The LFA discusses how this will not really save General Fund moneys even though the department will not be spending the money because more General Fund will be needed to fund the SEA. This use of trust lands income will also affect the other agencies that receive trust income.

Are Lease Rates Too Low?

Questions were raised about whether farmers and ranchers are paying their fair share when leasing trust lands. Are trust lands to support public schools or to subsidize agriculture? The question of fair lease rates for trust lands has been debated for years. In our 1983 performance audit, we found grazing rates were not maximizing income to the trust fund because the department charges below fair market value for its leases. The Board of Land Commissioners is required to "administer this trust to secure the largest measure of legitimate and reasonable advantage to the state." The department sets a minimum lease rate based on a formula tied to the price of beef. The department only charges the minimum rate unless the lease has been let through competitive bid. We recommended the department raise the grazing rate to a level that provides the "largest ... reasonable advantage to the state."

Our report also noted one way to help maximize the trust fund would be to seek competitive bids on state leases. At the time of our audit the department did not seek competitive bids. We found only 5 percent of grazing leases and

2 percent of agricultural leases were competitively bid. Department officials stated the lack of competitive bidding is largely due to two factors: the statutory provision allowing the current lessee to meet the high bid, and people do not want to create problems with their neighbors by bidding on their lease. We recommended the department advertise the leases that are coming up for renewal each year to encourage competitive bidding.

Management of Trust Lands

The lease rate issue is only part of the larger issue of the department's overall management approach to trust lands. In our report we had several other recommendations related to increasing income from trust lands and improving management of the lands. For example, we found the department managed many parcels which were less than 40 acres each. Many of state's small isolated parcels were unproductive, yet the department had not specifically evaluated what to do with these lands. Statutes allow the Board of Land Commissioners to exchange land in order to consolidate state lands and to sell land when it is in the best interest of the state. We recommended the department establish a program to remove unproductive small parcels from the inventory and consolidate lands into more manageable tracts.

We also recommended the department develop a plan to provide for active management of the state's trust lands. Implementation of such a plan could require legislative direction and changes in funding and staffing patterns. The Governor's budget states that public demand for a multitude of uses and the proper management of trust lands has increased in recent years. Increased management can be expected to produce greater long-term revenues to the trusts. These new uses and management efforts have created needs for updating procedures, changing lease stipulations, and conducting field reviews and investigations. To address these trust management needs the Governor proposes to add 3 FTE land use specialists, 2 FTE land use technicians, and 1.75 FTE clerical positions

Leasing of Recreation Access

The request mentioned that one way to increase trust lands income would be to have leases for recreation access. Again this has been a controversial issue for many years. In August 1990 the Board of Land Commissioners considered a report prepared by the department on the issue. The report listed several options to handle recreation access including recreation leases. The Board determined that an Environmental Impact Statement would be necessary before decisions are made on public access to trust lands. The EIS will assess social, economic, and environmental impacts of providing the public with recreational access to trust lands. The Governor's budget includes \$300,000 in General Fund biennial appropriation for the study.

The issue of recreation access is part of the larger issue of multiple-use management of trust lands. Section 77-1-203, MCA, requires the department to manage state lands under the multiple-use management concept. Multiple-use management of state land involves using all of the various resources of the lands in the combination that best meets the needs of the people and the beneficiaries

of the trust. If a parcel with one classification, for example grazing, has other multiple uses or resource values, then it should be managed to maintain or enhance these multiple-use values. Other multiple uses include recreation use, wildlife use, and public use.

At the time of our performance audit the department did not have a plan for the multiple use of state land. Individual parcels were generally not used for multiple purposes other than the leasing of surface and mineral rights. Partly in response to the enactment of the multiple-use statute, the department conducted an inventory of state trust land to determine the recreational potential of the land. From this study some fishing access sites were leased by the Department of Fish, Wildlife and Parks. We recommended the department develop plans and policies for the multiple-use of trust land.

Conclusion

The various trust funds are showing a stable gain in both income and fund balance. The combined trusts are currently raising over \$50 million a year with the largest beneficiary being common schools. Should lease rates be increased to provide more money to the trusts? Would improved management practices increase trust income? These are hard questions to answer. Appendix A shows that for FY 1989-90 leases on trust lands raised about 26 percent of trust income. By far, investment earnings are the largest contributor to trust income. The Governor has proposed increasing staffing levels for land management efforts.

Currently the General Fund supports about 50 percent of the department's budget. This can vary considerably depending on the amount of money needed for fire suppression costs. OLA has made some recommendations that could reduce the use of the General Fund. The Governor has also proposed changing the department's funding source for land management functions.

Recreation access may be the most controversial issue covered. It appears this issue is on hold, at least until the EIS requested by the Board of Land Commissions is completed.

v/v9.mem

Exhibit # 19a
4/10/91 HB 778

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10th day of April, 1991.

Name: Jack Schonen

Address: Box 2

Ramsey Mt. 59748

Telephone Number: 782-1560

Representing whom?

Skyline Sportsmen

Appearing on which proposal?

HB 778

Do you: Support? X Amend? Oppose?

Comments:

This bill is a compromise
bill between agriculture groups
and sportsmen. This bill will solve
a lot of problems regarding access
and is an excellent bill. We
would like you to support this
bill.



Wyoming State Land and Farm Loan Office

122 WEST 25TH STREET, HERSCHLER BUILDING
CHEYENNE, WYOMING 82002-0600
PHONE 307/777-7331

ext 20
10 April
HB 778

HOWARD M. SCHRINAR, COMMISSIONER, 777-6629
PAUL R. CLEARY, DEPUTY COMMISSIONER, 777-6629
BRYCE E. LUNDELL, STATE FORESTER, 777-7586
SHARON S. GARLAND, ASSISTANT COMMISSIONER, 777-6629
ACCOUNTING & ADMINISTRATION
DAVE W. FORCE, ASSISTANT COMMISSIONER, 777-6638
FARM LOANS & SURFACE LEASING
DON L. COLLAMORE, ASSISTANT COMMISSIONER, 777-7309
GOVERNMENT GRANTS & LOANS
HAROLD D. KEMP, ASSISTANT COMMISSIONER, 777-6643
MINERAL LEASING & ROYALTY COMPLIANCE

January 10, 1990

Mr. Jack Atcheson
The Montana Coalition for Appropriate
Management of State Lands
P.O. Box 173
Butte, Montana 59701

Dear Mr. Atcheson:

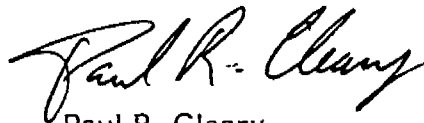
This is in response to your recent letter regarding the Wyoming Board of Land Commissioners rules controlling public hunting, fishing, and casual recreational use of state land (Chapter XIII). Enclosed for your information are:

- 1) The Board's Chapter XIII rules.
- 2) A letter which provides important background to the Board's rules.
- 3) A "Dear Sportsman" letter from the Commissioner which explains the Board's rules and encourages cooperation, courtesy and common sense on behalf of sportsmen using state land.
- 4) A "Public Land Access" brochure that was jointly prepared by several state and federal land and resource management agencies in Wyoming.
- 5) An August 3, 1989 Board Matter regarding several proposed road closures and public travel restrictions on state land.
- 6) A listing of potential public use activities already prohibited by Wyoming statute, and related penalties.
- 7) A September 7, 1989 Board Matter regarding Wyoming state land outfitting/guiding temporary use permits.
- 8) A December 2, 1989 Casper Star-Tribune article regarding the 1989 big game hunting season experience.
- 9) A December 21, 1989 press release from the Wyoming Range Management Coordinating Committee entitled "1989 Sees Few Access Conflicts".

With regard to your three specific questions, first, to our knowledge, no lessees have given up their leases as a result of the Board's Chapter XIII rules. Second, as indicated by enclosures #8 and #9, there were fewer conflicts and complaints last fall than in prior years. We believe there are several factors behind this reduction in conflicts and complaints, including the Board's rules clarifying what is and isn't allowed on state land and a strong spirit of cooperation and desire to get along between our lessees/landowners and sportmen. Third, the lease value concerns which lessees expressed during the adoption of the Board's Chapter XIII rules focused on potential damages to forage and improvements, potential loss and injury of livestock, and potential for increased trespass onto adjacent deeded lands.

I hope this information helps. Since I haven't faxed this information, I am returning the \$3.00 you submitted with your letter. Dennis Hemmer says, "Hello". Please do not hesitate to contact me if you have any further questions in this regard.

Sincerely,

A handwritten signature in black ink, reading "Paul R. Cleary". The signature is fluid and cursive, with the first name "Paul" and last name "Cleary" clearly legible.

Paul R. Cleary
Deputy Commissioner

PC/lb

EX # 20
100m91
RECEIVED
JAN 29 '90
GOVERNOR'S
OFFICE

January 26, 1990

Governor Mike Sullivan
State Capitol
Cheyenne, WY 82002

Dear Governor Sullivan:

At the November 20 meeting of the Wyoming Rangeland Management Coordinating Committee, the subject of public lands access was a topic of discussion. Several state and federal agencies, as well as interest groups represented, reported that the situation is vastly improved. In fact, the number of access-related conflicts reported during the 1989 field season was the smallest in recent memory.

*ON" (Mike Montana)

The WRMCC believes that this progress is directly attributable to efforts by several state agencies to better inform the public about access laws and regulations. The State Lands Department's work to inform the public about the new regulations regarding recreational access on state lands is one example. Additionally, the State Land Office, the Wyoming Game and Fish Department, the Wyoming Recreation Commission and the State Planning Coordinator's Office cooperated with the U. S. Forest Service and BLM in the publication and distribution of a Wyoming Public Land Access brochure. This brochure is a very valuable tool for increasing the public's understanding of the complex legal and regulatory nature of the access issue and the work of these state agencies is appreciated.

These efforts, along with the BLM's Operation Respect, have served to significantly reduce the confrontational nature of the public land access question. The WRMCC wanted to make you aware of progress in this regard.

Sincerely,

Bob

Bob Budd, Chairman
WRMCC

cc: WRMCC Members

01-11-85
 Ex #20
 100%
 ABT

24 Mar 84 UPDATE OF MONTANA FUTURES STUDY-1984
 UNIVERSITY OF MONTANA DECSYSTEM-2060 TOPS-20

FILE:

RECACC PUBLIC ACCESS ACROSS PRIV TO PUB LANDS

VALUE LABEL	VALUE	FREQUENCY	PERCENT	VALID PERCENT	CUM PERCENT
FOR	1	206	51.1	51.9	51.9
AGAINST	2	165	40.9	41.6	93.5
	9	26	6.5	6.5	100.0
	0	6	1.5	MISSING	
	TOTAL	403	100.0	100.0	
VALID CASES	397	MISSING CASES	6		

SLSTAX STATE SALES TAX ON NON-FOOD

VALUE LABEL	VALUE	FREQUENCY	PERCENT	VALID PERCENT	CUM PERCENT
FOR	1	121	30.0	30.1	30.1
AGAINST	2	270	67.0	67.2	97.3
	9	11	2.7	2.7	100.0
	0	1	.2	MISSING	
	TOTAL	403	100.0	100.0	
VALID CASES	402	MISSING CASES	1		

PUBACC PUB ACCESS TO LEASED STATE LAND FOR REC

VALUE LABEL	VALUE	FREQUENCY	PERCENT	VALID PERCENT	CUM PERCENT
FOR	1	292	72.5	73.4	73.4
AGAINST	2	79	19.6	19.8	93.2
	9	27	6.7	6.8	100.0
	0	5	1.2	MISSING	
	TOTAL	403	100.0	100.0	
VALID CASES	398	MISSING CASES	5		

CHAIRMAN PINSONEAULT AND MEMBERS OF THE SENATE JUDICIARY
COMMITTEE. MY NAME IS TOM LOFTSGAARD, I'M A STATE LAND LESSEE
AND ALSO REPRESENT THE LAND MANAGEMENT COUNCIL.

WE SUPPORT HB 778 AS IT IS PRESENTED, WITH ONE AREA OF
CONCERN IN SECTION 17 LINE 4, IT STATES: "THE LIABILITY OF THE
DEPARTMENT FOR DAMAGE PAYMENTS IS LIMITED TO THE EXISTING BALANCE
OF THE ACCOUNT." ALTHOUGH IT MAY BE A REMOTE POSSIBILITY, THERE
IS A CHANCE THAT A CATASTROPHIC SITUATION COULD RESULT. FOR
EXAMPLE: A FIRE CAUSED BY A RECREATIONAL USER, CONSUMES A
COMBINE, TRACTOR, OR SET OF FARM BUILDINGS; ANY ONE OF THESE
LOSSES COULD EASILY EXCEED \$100,000.

WE DO NOT FEEL ANY LESSEE SHOULD SUFFER ANY LOSS CAUSED BY
THE RECREATIONAL USERS OF STATE LAND.

THIS BILL ADDRESSES MANY OF OUR CONCERNS AS STATE LAND
LESSEES. WE FEEL IT IS A FAIR COMPROMISE TO THIS LEGISLATION AND
SHOULD BE PASSED WITHOUT AMENDMENTS.

THANK YOU.

OK
10 Apr
HB 778

EX 4-5
10 Apr
HB 77,

MR. CHAIRMAN AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE,
MY NAME IS BOB FOUHY AND I REPRESENT THE LAND MANAGEMENT COUNCIL.
WE SUPPORT HB 778/03 AS IT PRESENTLY STANDS EXCEPT AS PREVIOUSLY
NOTED BY TOM LOFTSGAARD AND THE MONTANA STOCKGROWERS ASSOCIATION.

THIS LEGISLATION WILL MAKE IT DIFFICULT AT BEST BUT WE
RECOGNIZE THE FACT THAT IT IS ALMOST IMPOSSIBLE TO ADEQUATELY FIT
THE RAMIFICATIONS OF THIS BILL TO THE SPECIFIC PROBLEMS OF EACH
AREA.

THIS BILL SPECIFICALLY ADDRESSES THE NEED OF COMPENSATING
THE SURFACE USE LESSEE FOR DAMAGES TO PERSONAL PROPERTY AND TO AN
EXTENT, SATISFIES THE BENEFICIARIES OF THE TRUST WHICH ARE
PRIMARILY THE COMMON SCHOOLS OF THE STATE.

THEREFORE WE FEEL THE HB 778/03 AS IT READS AT THIS TIME,
REPRESENTS A COMPROMISE WE HOPE IS AGREEABLE AND WORKABLE TO ALL
PARTIES CONCERNED.

WE ALSO BELIEVE THAT THIS BILL WOULD ACTUALLY IMPROVE AND
INCREASE THE QUALITY OF HUNTING IN OUR AREA.

THANK YOU FOR YOUR TIME.

Exhibit 229
10 Apr 91
HB 778

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10th day of April, 1991.

Name: Joe Gutkoski

Address: 301 N. 19th St.

Bozeman MT 59715

Telephone Number: 587-3242

Representing whom?

Gallatin Wildlife Association.

Appearing on which proposal?

HB 778 D. Brown

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

Approve HB 778 because it will benefit the state
School Foundation Program through additional funds.
The compromises with the grazing permittees
have been successful. There was give & take on both
sides.

EX #
1004
HB7

SE

MONTANA TRAIL VEHICLE RIDERS ASSN.

3301 W. Babcock
Bozeman, MT 59715

Linda Y. Ellison Land Use Coordinator

April 10, 1991

Before the Senate Judiciary Committee in Support of HB 778

I believe we can all agree that access is a key piece in Montana's land management puzzle. Access is very competitive in nature. The land resource on which Montana's agricultural, mining, timber, oil and gas, and recreation industries is based is a finite matter. The distribution of those various uses does change from time to time, and this legislation properly addresses that distribution.

There are two major aspects of this bill which address our particular concerns.

First of all, it is important that an adequate fee fulfil the requirement to support the trust, and it is appropriate that a portion of that fee be set aside to address potential adverse impacts of recreational use. It is also important that that fee be separate and distinct from other fees which are required for the purchase of big game hunting and fishing licenses.

As an off-road motorcyclist, I use my machine to enhance my opportunities to reach the places in Montana where I like to hunt and fish. If off-road use is deemed not appropriate for lands which will be accessible by this act, then I appreciate not having to shoulder the burden of a fee from which I will not benefit.

A second important point is the language which establishes rulemaking authority. Allocation of land resources for off-road vehicle use is nearly always controversial in nature, and while off-road vehicle use may not be a factor at the onset, ^{we would} ~~this~~ ^{we would} ~~establishes~~ ^{we would} an avenue for future consideration should that be deemed appropriate.

The motorized recreation community appreciates the long hours that have gone into the construction of this particular bill.

— addendum —

Ex. 23
4-10-91
HB 778

With implementation of this action, our organization recommends special attention be paid to clarifying the fact that this access fee is not a substitute for the fees covering camping at state campgrounds. There is apparent misunderstanding on that issue already.

S. Ellison

MTURA

Rancher bids \$29 per AUM and he probably won't get it

10 Apr 91
1 B 778

A Great Falls area rancher has bid more than \$29 per animal unit month (AUM) in an attempt to obtain a tract of state grazing land, probably the highest bid recorded in the state.

And he probably won't get the 10-year lease for the 243-acres of grazing ground near Eden.

John Halko said with rising prices for private pasture, and the way the pasture would fit into his small operation, the bid of \$29.24 an AUM pencils out as a good move.

"I know what it's been costing to rent grass" privately, Halko said, adding he's been paying upwards of \$15 an AUM. The state lease would allow those AUMs to be spread out throughout a year, something he can't get from private rented pasture, and also the state lease land is adjacent to other pasture he owns.

But it's also bordered by Dean Jacobs' ranch, and Jacobs is the current leaseholder.

Because he holds the lease which came up for bid last month, Jacobs has the right of first refusal, meaning he can keep the tract if he matches Halko's high bid.

"I've already paid it," Jacobs said Wednesday night in a telephone interview. Because of the way the land fits into his operation, Jacobs said he's got little choice but to retain the lease.

"A guy can pay a little bit more

for it" when the land sits adjacent to his private ground, Jacobs said, but at more than \$29 an AUM, "A guy ain't making any money on it."

The base, or minimum bid for state leases this year is \$4.24 an AUM, and the majority of the 4 million acres of state leased land will go for that.

Halko said that "even if they do match the bid, the money goes to the schools, so it does some good."

Halko, who has a small place and holds another job in Great Falls, said he needs more pasture in part because a ranch he was leasing "was sold out from under me" about three years ago.

It was Jacobs who bought that ranch, and said Halko was given an opportunity to bid on that.

Jacobs also said he "kicking around" the possibility of requesting a hearing on the lease bid. Such a hearing can be requested before the DSL commissioner to determine if bids exceed "community standards."

While some leases have been let for less than the high bid through the community standards method, Jeff Hagener of DSL said it's somewhat rare.

The grazing lease goes with a 77-acre parcel of hay ground, which appears to go to Jacobs on a crop-share bid of 33 percent, meaning he must give the state one third of the value of the hay he cuts.

Stephens abandons state lands plan

HELENA (AP) — The Stephens administration has abandoned a proposal for funding the Department of State Lands after the Legislature's chief attorney said the plan may be unconstitutional.

Lands Commissioner Dennis Casey announced the decision Monday at meetings of the state Land Board and the joint appropriations subcommittee reviewing his department's budget.

The administration's action on the funding won't affect the budget, Casey emphasized.

Original plan

The original proposal recommended using money earned on the lease of state lands for grazing and agriculture to finance the department's management of such lands. The money — about \$6.8 million over the next two years — is now given to public schools.

The move would have forced schools to ask lawmakers to restore the money from the state's general fund. Without the transfer, the same amount of money still would have to come from the general fund for State Lands Department operations.

An opinion late last year by Greg Petesch, chief of the Legislature's Legal Services Division, said the shift of money probably violates the constitutional mandate that money from school trust lands be distributed to schools.

Casey said Monday his agency has its own legal opinion to the contrary, but he acknowledged that legislators would be more apt to

heed the conclusion of their own staff attorney.

He told the Land Board that certain provisions in the department's preliminary program for allowing public access to state lands also may be construed as violating the same constitutional requirement.

For example, any fees paid for recreational use of state land would be used for such things as weed control and to compensate landowners for damage caused by the public access, Casey said.

But, the board decided not to alter its access plan.

Gov. Stan Stephens, board chairman, said the agency should not abandon those provisions just because of a legal conclusion.

"We shouldn't simply back off because of one legal opinion," he said. "If we are to run for cover every time we get an opposing legal opinion, we're not going to accomplish very much."

Secretary of State Mike Cooney, another board member, agreed that the department should let the legislative process proceed.

No guarantee

Casey suggested the issue of what represents a constitutional use of the state lands money may have to be settled in court.

State Superintendent of Schools Nancy Keenan later said she was glad the administration changed its mind on funding for the department. There was no guarantee that the Legislature would replace the money diverted from schools to the agency, she said.

EX. 27
10 Apr 91
#B 778

State Lands audit advises multiple use

2

2—The Montana Standard, Butte, Thursday, March 7, 1990

Multiple-use of public lands, leasing fees addressed in State Lands audit

By Eric Williams
Standard Staff Writer

An audit of the Department of State Lands (DSL) shows that 100 percent of the money used to administer state school trust lands comes from general taxpayer dollars.

To change that, the Stephens administration's budget initially proposed that revenue produced from those lands be used for administration.

However, the administration has removed that suggestion from its budget proposal, which will be considered soon by the Legislature.

A main reason the proposal was dropped, said Jeff Hagener of DSL, is it would simply be a "tradeoff" that would have little practical or fiscal effect.

Less money would go to public schools, which rely heavily on funds generated by school trust lands if lease revenues were used to administer those same lands generating the money.

Therefore, a like amount would have to be transferred from the general fund into the school equalization pot.

Revenue from state land leases and interest from the trust pumped more than \$55 million into schools in fiscal 1989-90.

According to the audit, done by Deputy Legislative Auditor Jim Pellegrini and completed in mid-January, up to 10 percent of the lands-generated money would go toward administering that ground.

Hagener said that roughly \$5 mil-

lion "would need to be replaced by general fund dollars to the schools."

The audit, which was done at the request of Rep. Bob Pavlovich, D-Butte, shows that in fiscal 1987-88, all of the \$544,506 used for land administration came from the general fund, as did the \$556,443 needed in fiscal 1988-89.

Sportsmen and other recreationists, who have sued the state for access to state trust lands, contend that the fact taxpayer dollars are used to administer those lands only serves to bolster their argument that the ground should be open to the public.

In total, the general fund paid for 46.2 percent of all DSL functions in 1987-88, and 63.3 percent in 1988-89. The entire department needed \$17.7 million in 1987-88, and \$28.2 million in 1988-89.

Other areas are central management, \$1.4 million in 1988-89; reclamation \$7 million; resource development, \$263,000; and forestry, \$18.9 million.

The audit also found that DSL does "Not have a plan for the multiple use of state land."

Hagener said that in the sense say, the Bureau of Land Management has an overall land management plan, DSL does not have a multiple use plan for grazing and agriculture ground. For the forestry land, he said, DSL's management is similar to the BLM's.

On the grazing and agriculture ground — which accounts for about three-fourths of the 5.2 million state-owned acres — Hagener said he feels DSL manages the whole under a multiple-use concept, but

individual tracts are managed for their primary value, generally grazing or growing crops.

In the audit, Pellegrini said, "We recommend the department develop plans and policies for the multiple use of state lands."

Hagener said at this point, DSL has no plans to substantially alter its management plans.

However, two bills being considered by the Legislature could affect that. Both are carried by Butte Democrat Dave Brown, and to varying degrees would open the land to public access.

Another question addressed by the audit is, "Are lease rates too low?"

Pellegrini wrote that "We recommend the department raise the grazing rate to a level that provides the 'largest ... reasonable advantage to the state.'"

Hagener said the auditors may believe lease rates — set at a minimum of \$4.14 an animal unit month (AUM) this year — may be too low.

But, he said the Legislature and the State Board of Land Commissioners are the only bodies legally able to raise rates. The department has no ability to do so, Hagener said.

Hagener pointed to a recent private study, done for the Land Board, which determined that the state leases were too high, when compared to private lease arrangements and improvements such as fencing and weed control were factored in.

Hagener said he didn't agree with all aspects of that study, but said it

indicates a variety of views on the price of state leases.

The minimum leases are established through a formula which includes the price of beef, and the audit noted "The department only charges the minimum rate unless the lease has been let through competitive bid."

The audit noted that "only 5 percent of grazing leases and 2 percent of the agriculture leases of agricultural leases are competitively bid."

The auditor said that is probably due to two factors: "The statutory provision allowing the current lessee to meet the high bid, and people do not want to create problems with their neighbors by bidding on their lease."

The auditor recommended DSL advertise the generally 10-year leases which are coming up for renewal/bid.

Hagener said he has no objections to advertising leases which are coming open. But said he's not sure there would be enough of an increase in competitive bidding — and presumably higher lease rates — to pay for the advertising.

The minimum estimate is that advertising would cost \$38,000 a year, Hagener said. Also, soon-to-be-due leases are posted in county courthouses, and current leaseholders, past bidders and anyone requesting so are on a mailing list which tells each parcel open for bidding.

The number of competitive bids has been steadily increasing, Hagener said, to 80 last year, though there were 56 this year.

10 Apr. 91
HB 778

Butte / Area

A BID SYSTEM ON RECREATION / *NON RESIDENT HUNTING CLUB WOULD TAKE OVER!*

Public access to school trust lands urged

By Eric Williams
Standard Staff Writer

The state of Montana isn't getting a good monetary return on its state school trust lands, officials were told Tuesday in Butte, and one way to increase revenues is give the public access to that property.

Gary Sturm of Helena told Department of State Lands (DSL) Commissioner Dennis Casey "someone is not a very good manager" if DSL can't reap more rewards than it does from leasing property for grazing, cropping, timber, minerals, oil and gas and others.

Using a 1988 Legislative Fiscal Analyst's evaluation that the 5.1 million acres of state school trust land is worth \$661 million, Sturm said DSL is making just 3.6 percent interest. And, he said, he believes that \$661 is a low estimate.

"Give me that \$661 million, and I'll double it," he said.

Sturm and more than 100 others attended the fourth of a series of meetings DSL is conducting to gain comment for the State Board of Land Commissioners.

The meetings are in response to a lawsuit filed by a coalition of

sportsmen groups that want access restrictions eased on the land the state leases to ranchers and others.

The most coveted access is on grazing lands. Sturm said he feels the \$3.29 average paid to feed one cow a month doesn't meet a state requirement that the property fetch "fair market value."

Grazing brings in about \$4 million annually, while crops reap nearly \$5 million a year.

Casey told Sturm the fee is set by the Legislature.

Bob Bugni of the Prickley Pear Sportsmen Club in Helena said he feels the state is abrogating its "fiduciary responsibility" to bring in more money.

During recently failed negotiations between the state and the suing sportsmen groups, Bugni said, "The coalition offered to compensate" the state to help defray costs and bring in more money from the school trust lands.

"If you have a fiduciary responsibility, how could you turn that offer down?" he asked.

Casey said the proposal wasn't exactly turned down, but the proposal was part of a package that fell apart when negotiations reached an impasse over whether

Hearing results won't be ready before case goes to trial

A lawsuit over access to state school trust lands was the main reason for a series of statewide hearings on the issue.

However, recommendations that come out of the meetings probably won't be made before the matter goes to trial.

State Lands Commissioner Dennis Casey said Tuesday that a July 9 trial date has been set for the lawsuit.

The public hearings continue this week. Then, state officials must comb through the transcripts of hundreds of citizen comments and put them into a form that can be evaluated.

After that, he said, one or more recommendations will be submitted to the State Land Board for consideration before a decision is made.

"It could be recommendations will be taken to the board by August," Casey said.

Whatever decision the land board reaches must undergo environmental review and more public comment, Casey said. "My best judgement is the trial will proceed before this is completed."

leaseholders themselves — along with the state — should be paid if access is granted.

Kim Enkerud of the Montana Stockgrowers Association said her group opposes changes to the existing system of leasing state lands. She said it has worked well for decades — for landowners and recreationists alike.

But, Enkerud said, if changes are made, she would like officials to consider creating a system that in effect would create two leases for state tracts.

One would be the standard lease — mostly for grazing or growing crops. The second would be a recreational lease.

As an example, Enkerud said, the

recreational lease might be bought by a hunting club, which would be responsible for any damage, additional weed infestation or other degradation caused by recreation. Likewise, the agriculture leaseholder would take care of damage from that side.

The two leases, Enkerud said, could "double" the income on state lands recreationists yearn to use.

The sportsmen's camp, however, has proposed tacking a fee — say \$1 for Montanans, \$2 for out-of-staters — onto the \$2 conservation licenses. More than 400,000 such licenses were sold last year.

"We're willing to pay," said Tony Schoonen of Ramsay, a coalition member.

But the group, called the Coalition for the Appropriate Management of State Lands, has not agreed to the direct compensation of landowners or lessees.

But several ranchers marched to the microphone to say that their "stewardship responsibilities" will expand if the public is allowed to use the lands they've leased and tended for years.

They said the increased traffic would cause erosion, bring in more noxious weeds, result in downed fences and more work.

Sportsmen said rules would preclude such department, but Enkerud countered, "While reasonable rules may be implemented, it does not mean they will be followed."

Van Davis of Twin Bridges told sportsmen, "You brought a lot of this on yourselves ... you just keep pushing and pushing." Soon, Davis said, sportsmen may gain access to state school trust lands, but will alienate themselves to the point they won't be allowed on any private ground.

Jack Atcheson of Butte told the group that hunters and ranchers had better quit fighting between themselves because they've got a bigger, common enemy.

He said out-of-state land buyers will own most of the prime private ground and will hold many public leases, "and we'll all be locked out."

Also, Atcheson produced articles from numerous newspapers and magazines telling of Westerners who kill animals and damage the landscape with their livestock.

"The same people who hate hunters hate cows," he said.

English postage
England introduced the first postage stamp in 1840.

Rancher bids \$29 per AUM and he probably won't get it

A Great Falls area rancher has bid more than \$29 per animal unit month (AUM) in an attempt to obtain a tract of state grazing land, probably the highest bid recorded in the state.

And he probably won't get the 10-year lease for the 243-acres of grazing ground near Eden.

John Halko said with rising prices for private pasture, and the way the pasture would fit into his small operation, the bid of \$29.24 an AUM pencils out as a good move.

"I know what it's been costing to rent grass" privately, Halko said, adding he's been paying upwards of \$15 an AUM. The state lease would allow those AUMs to be spread out throughout a year, something he can't get from private rented pasture, and also the state lease land is adjacent to other pasture he owns.

But it's also bordered by Dean Jacobs' ranch, and Jacobs is the current leaseholder.

Because he holds the lease which came up for bid last month, Jacobs has the right of first refusal, meaning he can keep the tract if he matches Halko's high bid.

"I've already paid it," Jacobs said Wednesday night in a telephone interview. Because of the way the land fits into his operation, Jacobs said he's got little choice but to retain the lease.

"A guy can pay a little bit more

for it" when the land sits adjacent to his private ground, Jacobs said, but at more than \$29 an AUM, "A guy ain't making any money on it."

The base, or minimum bid for state leases this year is \$4.24 an AUM, and the majority of the 4 million acres of state leased land will go for that.

Halko said that "even if they do match the bid, the money goes to the schools, so it does some good."

Halko, who has a small place and holds another job in Great Falls, said he needs more pasture in part because a ranch he was leasing, "was sold out from under me" about three years ago.

It was Jacobs who bought that ranch, and said Halko was given an opportunity to bid on that.

Jacobs also said he "kicking around" the possibility of requesting a hearing on the lease bid. Such a hearing can be requested before the DSL commissioner to determine if bids exceed "community standards."

While some leases have been let for less than the high bid through the community standards method, Jeff Hagener of DSL said it's somewhat rare.

The grazing lease goes with a 77-acre parcel of hay ground, which appears to go to Jacobs on a crop-share bid of 33 percent, meaning he must give the state one third of the value of the hay he cuts.

Stephens abandons state lands plan

HELENA (AP) — The Stephens administration has abandoned a proposal for funding the Department of State Lands after the Legislature's chief attorney said the plan may be unconstitutional.

Lands Commissioner Dennis Casey announced the decision Monday at meetings of the state Land Board and the joint appropriations subcommittee reviewing his department's budget.

The administration's action on the funding won't affect the budget, Casey emphasized.

Original plan

The original proposal recommended using money earned on the lease of state lands for grazing and agriculture to finance the department's management of such lands. The money — about \$6.8 million over the next two years — is now given to public schools.

The move would have forced schools to ask lawmakers to restore the money from the state's general fund. Without the transfer, the same amount of money still would have to come from the general fund for State Lands Department operations.

An opinion late last year by Greg Petesch, chief of the Legislature's Legal Services Division, said the shift of money probably violates the constitutional mandate that money from school trust lands be distributed to schools.

Casey said Monday his agency has its own legal opinion to the contrary, but he acknowledged that legislators would be more apt to

heed the conclusion of their own staff attorney.

He told the Land Board that certain provisions in the department's preliminary program for allowing public access to state lands also may be construed as violating the same constitutional requirement.

For example, any fees paid for recreational use of state land would be used for such things as weed control and to compensate landowners for damage caused by the public access, Casey said.

But, the board decided not to alter its access plan.

Gov. Stan Stephens, board chairman, said the agency should not abandon those provisions just because of a legal conclusion.

"We shouldn't simply back off because of one legal opinion," he said. "If we are to run for cover every time we get an opposing legal opinion, we're not going to accomplish very much."

Secretary of State Mike Cooney, another board member, agreed that the department should let the legislative process proceed.

No guarantee

Casey suggested the issue of what represents a constitutional use of the state lands money may have to be settled in court.

State Superintendent of Schools Nancy Keenan later said she was glad the administration changed its mind on funding for the department. There was no guarantee that the Legislature would replace the money diverted from schools to the agency, she said.

10 Apr. 9
HB 778

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 10th day of April, 1991.

Name: Gary Sturn

Address: 146 Brierwood

Helena MT 59601

Telephone Number: (406) 442-5484

Representing whom?

Packly Pear Sportmen's Association

Appearing on which proposal?

HB 778

Do you: Support? X

Amend?

Oppose?

Comments:

This bill as amended represents a fair,
equitable compromise which can and should be
supported by all sportmen's and leaseholders.
The sportmen have agreed to pay for the privilege
of accessing State land both to provide money
to State School Trust Fund and to help offset
some of the cost of managing these lands. The
leaseholders are recognizing the right of Montana
sportmen to access these lands. All Montana
citizens win with this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

COMMITTEE ON

HB 778 - Senate Judiciary

DATE

10 April 91 1 of 2

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Kate Herlein	MT Stockgrowers	HB 778	✓	
Poland Mosher	MT Stockgrowers	HB 778	✓	
Robert Cooper	mt Stockgrowers	HB 775	✓	
DAROL MOSHER	MT CATTLE WOMEN	HB 778	✓	
Robert Koch	Mont Stockgrowers	# 778	✓	
James W. McDonald	MT Wildlife Fed.	HB 778	✓	
Alan W. Rella	Self	HB 778	✓	
Thomasoftsgaard	Land Mgmt Council	HB 775	✓	
Robert Fouhy	Land Management Council	HB 778	✓	
Gar Bradley	mt Magistrate Assoc	HB 155		X
Diadys Vance	mt Magistrate Assoc	HB 155		X
Veronik Chagnon	mt Magistrate Assoc	HB 155		X
DAVE BROWN	sponsor - HB #72	HB 778	X	
Morvin Barber	H. P. P.	HB 778	X	
Lynne Frank	mt. Farm Bureau	HB 778	X	
William F. Turk	Mont. Sportsman	778	X	
Kay N. N. N.	WIFE	778	X	
John Eliza	MT Trail Vehicle Assoc	778	X	
Tom Schonen	St. L. 42nd (21) from	778	X	
Paul F. Berg	Southern Montana Sportsman Assoc	778	X	
Joe Gutkoski	Gallatin Wildlife Assoc.	778	✓	
Jim H. H.	mt Stockgrowers	778	X	
Gordon Muzin	MACO	155	X	
Satchel L. L.	Cons. Com. Atty. MCA	155	X	
K. Ann Pfeifer	PO Box 5955 Child Support Enforcement Div	99.3		
Russell R. Andrews	Box 579 Choteau Mont. Co. Atty Assoc	155	X	

(Please leave prepared statement with Secretary)

DATE 10 April 91 2 of 2
iciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Aun Gilkey	DFS	HB 993	X	
El Hall	MBCC	HB 155	X	
Doug Matthias	DFS	HB 993	X	
Bob Roney Rep	Dist 82	HB 778		X
Bob Roney	Butte	778	X	
Bill Fleiner	MT Sheriff's Office	HB 155	X	
Dennis Caskey	DSL	HB 778	X	
Bob Buga	PRICKLY PEAR GRADUATE	HB 778	X	
Mark Racicot	AG	HB 778	X	
Mike Cooney	Sec of State	HB 778	X	
Bill Holdre	SKYLINE SPORTSMEN	HB 778	✓	
Shan Brooke	Wool growers	"	✓	
Jack Schom	Skylines Sportsmen	HB 778	✓	
Kim Enkerud	MT Assn. State Grazing	HB 778	✓	
Ed Lord	MSG R	HB 778	✓	

10 Please leave prepared statement with Secretary)

Ravalli County. He said he believes a study commission is foolish, and that there was opposition to funding a study commission.

Senator Towe stated he served on a study commission in 1975, and that the Committee needs to consider that it may be more effective to add a judge to the existing district, rather than to create another district. He explained that time left over from Ravalli County could be given to Missoula County.

Senator Harp made a motion that the proposed amendments (Exhibit #5) be approved. The motion carried with all members voting aye except Senator Mazurek, who voted no.

Chairman Pinsonneault said he planned to address Senator Towe's concerns in a Conference Committee.

Recommendation and Vote:

Senator Harp made a motion that HB 934 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HOUSE BILL 778

Motion:

Discussion:

Representative Ben Cohen, District 3, provided copies of the second reading (yellow) of HB 778 which, he said, defines hunting and fishing as general recreational use, and defines bird watching, berry picking, skiing, etc, as special recreational use (Exhibit #6). He said that the bird watcher or herbalist can go on state lands free, but he is concerned with requiring that people pay for the general use of state forest lands.

Representative Cohen asked what would happen if a hunter shot a deer and it wandered from federal lands to state lands, but the hunter did not have a permit. He said he was concerned that HB 778 is a broader invasion of the Sage Brush Rebellion. Representative Cohen recommended amending the bill to the way it was on the House Floor, as it recognizes the right of people to free recreational use.

Representative Cohen advised the Committee that the yellow, second reading copy of the bill came out of the House Natural Resources Committee. He told the Committee that the Wyoming Board of Lands has taken action which reduced damage complaints from 200 per year to 50 per year, and asked the Committee to look at this.

Representative Dave Brown countered Representative Cohen's statement, and said he hoped the Committee wouldn't ignore the 48 people who testified in support of HB 778 at the Senate hearing.

He said the bill was resisted by Representatives Cohen and Raney in the House, and that the issues revolved around paying \$5 per year for fishing and hunting, and the Educational Trust under Sections IV and VII of the Constitution. Representative Brown said their arguments a significantly flawed in those areas, as values are not established for any use other than hunting and fishing. He further stated that Section 7, on page 23 of the bill, allows the Board to adopt rules for special use licenses if values change, and that the many lessees, landowners, and sportsmen he spoke with gave no specific objection to this.

Senator Towe asked what would happen if there were substantial interest in bird watching on state lands. John North, Attorney, State Lands, replied that if the Board decided bird watching was of interest on state lands, it could adopt a rule for general recreational use.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

Senator Grosfield made a motion that HB 778 BE CONCURRED IN. The motion carried 9-1 in a roll call vote (attached). Senators Halligan and Svrcek were called from the room and did not leave votes.

* * * * *

The meeting was recessed at 12 noon and reconvened at 3 p.m.

* * * * *

EXECUTIVE ACTION ON HOUSE BILL 993

Motion:

Discussion:

Amendments, Discussion, and Votes:

Valencia Lane explained that the amendment changes "shall" to "may", and that the Department of Family Services does not want this change (Exhibit #7).

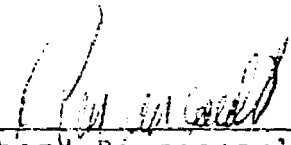
Senator Yellowtail made a motion that Senator Towe's amendments be approved. The motion failed with all members voting no, except Senator Towe.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 11, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 778 (third reading copy as amended -- blue), respectfully report that House Bill No. 778 be concurred in.

Signed. 

Richard Pinsoneault, Chairman

4-11-91
And. Coord.

4-11-91 1:25
Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE

JUDICIARY

Date 11 Apr 91

Bill No. HB 778

Time 12:03 pm

NAME	YES	NO
Sen. Brown	✓	
Sen. Crippen	✓	
Sen. Doherty	✓	
Sen. Grosfield	✓	
Sen. Halligan		
Sen. Harp	✓	
Sen. Mazurek	✓	
Sen. Rye	✓	
Sen. Svrcek		
Sen. Towe	✓	
Sen. Yellowtail		✓
Sen. Pinsoneault	✓	

8 . 1

Jody Bird
Secretary

Sen. Dick Pinsoneault
Chairman

Motion: Grosfield - BCI